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**TESTIMONY BEFORE THE  
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS, COMMITTEE  
ON EDUCATION AND THE WORKFORCE, UNITED STATES HOUSE OF  
REPRESENTATIVES**

**HEARING ON**

**“EXPANDING AFFORDABLE HEALTH CARE OPTIONS: EXAMINING THE  
DEPARTMENT OF LABOR’S PROPOSED RULE ON ASSOCIATION HEALTH PLANS”**

**March 20, 2018**

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Thank you, Chairman Walberg, Ranking Member Sablan, Congresswoman Blunt-Rochester and members of the Subcommittee on Health, Employment, Labor, and Pensions.

As a leading representative of the 28 million small businesses in America, Small Business Majority is pleased to offer testimony today regarding options to expand access to affordable healthcare and the detrimental effects the U.S. Department of Labor’s proposed changes to Association Health Plan (AHP) regulations would have on small businesses.

Small Business Majority’s mission is to empower America’s entrepreneurs to build a thriving and inclusive economy. We actively engage small business owners and policymakers in support of public policy solutions, and deliver information and resources to entrepreneurs that promote small business growth. Our extensive scientific opinion polling, focus groups and economic research help us educate and inform policymakers, the media and other stakeholders about key issues impacting small businesses and freelancers, including healthcare, access to capital, taxes, retirement and critical workforce issues.

Small Business Majority has a network of more than 55,000 small business owners across the country, with nine offices in Washington, D.C. and seven states. We work closely with our network and with more than 1,000 local business groups to create a strong small business voice in Washington and state capitals, and deliver critical education and resources to America’s job-creating entrepreneurs. A key part of our work over the past 12 years has been to advocate for policies that help small businesses, their employees and self-employed entrepreneurs access affordable and comprehensive health coverage.

Over the past six years, the Patient Protection and Affordable Care Act (ACA) has provided healthcare to 24 million individuals nationwide who otherwise couldn’t access coverage, many of whom work for small employers or are themselves business owners or self-employed individuals. Unfortunately, prior to the law’s enactment, small businesses and their employees comprised a disproportionate share of the working uninsured. What’s more, small employers faced greater instability in their health costs and coverage options, and when they could access health coverage, small businesses paid on average 18% more than their larger counterparts, usually for less comprehensive coverage.

Critically, many small businesses have seen their health insurance rates stabilize under the ACA. Since 2010, the increase in small business healthcare costs has been at the lowest level in years, following regular double-digit increases prior to the law’s enactment. In fact, between 2008 and 2010, the

average yearly premium increase in the small group market was 10.4% according to the Centers for Medicare and Medicaid Services. Between 2011 and 2015, the average increase dropped in half to just 5.2%. It should come as no surprise then that scientific opinion polling we conducted last year found 6 in 10 small business owners support retaining and strengthening the ACA.<sup>1</sup>

More recent data from the Kaiser Family Foundation's 2017 Employer Health Benefits Survey shows that premiums continue to be stable for small businesses that offer employer-sponsored coverage to their employees. For all firms between 3-199 employees, the average premium increase from 2016 to 2017 was less than 1%. This is lower than the average premium rate increases from 2016 to 2017 across all firm sizes, which were 4% for singles and 3% for families.<sup>2</sup> Employee contributions for employer-sponsored coverage have also stabilized, reversing a pre-ACA trend of double-digit increases in insurance costs for small businesses that they often had to pass off onto their employees. This has made a significant impact on small businesses' bottom lines.

However, national efforts to chip away at the healthcare law, or repeal it entirely, threaten this progress. Recent efforts to undo key provisions of the ACA through legislation and executive action threaten to disrupt the marketplaces and in turn harm small business owners, their employees and self-employed individuals. While we believe certain provisions of the ACA can and should be improved, undermining the ACA eradicates hard-won benefits for America's entrepreneurs, causing a rapid rise in healthcare costs and creating tremendous economic instability.

That's why we're so concerned about the proposed changes to the Department of Labor's rules governing AHPs. In order for small businesses to be able to receive affordable coverage, the small group market's risk pool must be robust and well balanced. It's important to note that the small group market is where most small businesses currently purchase health coverage, which is why it's crucial to protect this market and ensure it's as strong as possible. The proposed rule would allow associations to operate as a single large employer, which would in turn allow them to be regulated as a large group health plan.

We believe this proposed change would result in disruptions in the small group market by creating separate risk pools for some employers, which would have the unintended consequence of raising premiums for other small businesses. When firms with healthy employees exit the small group market, the risk pool becomes unbalanced, causing rates to soar for the remaining employers and employees. Indeed, the National Small Business Association, in its submitted comments to the Labor Department on the proposed rule, emphasized the importance of "ensuring that the millions of smaller companies not purchasing coverage through an AHP do not see their insurance costs further escalate as a result of selection issues that create price disparities based on health status rather than the reduction of actual healthcare costs." We believe allowing self-employed individuals to enroll in AHPs will have similar repercussions for the individual marketplace.

Moreover, regulations for such plans do not require that they cover certain essential health benefits while also not requiring protections that typically prevent insurers from charging higher fees based on factors like gender, occupation and industry, age and group size. While this might mean that some small businesses with younger, healthier employees can purchase a cheaper plan, these plans won't provide the coverage they need if someone gets sick, thus undermining the goal of ensuring that most healthcare is covered and that the long-standing phenomenon of uncompensated care is reduced.

Additionally, we're concerned about the impact the proposed rule would have on small businesses as their workforce ages, as it is unclear whether the rule prevents insurers from charging more based on age than is allowed by the ACA. This is a particular concern for small businesses, as many have employees that work with them for years. As their employees age and potentially face health risks, small businesses could find themselves with few or no options for affordable health coverage.

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<sup>1</sup> <http://smallbusinessmajority.org/our-research/healthcare/small-businesses-support-aca-over-replacement-plan>

<sup>2</sup> Kaiser Family Foundation, 2017 Employer Health Benefits Survey, September 2017, <http://www.kff.org/report-section/ehbs-2017-summary-of-findings/>

As noted above, these plans are also not required to cover essential health benefits and could use this exemption to design health plans that intentionally exclude certain individuals. For example, the plans could exclude services for maternity coverage or mental health treatment, preventing small businesses with employees that need such services from enrolling. What's more, the proposed rule suggests that current protections against discriminatory marketing practices would not apply to AHPs, which would allow these plans to use marketing techniques to discourage enrollment from companies with employees that have expensive or complicated health issues, including pre-existing conditions, or small businesses that employ a high number of females or older workers. These discriminatory practices would exacerbate the problem of creating separate risk pools and further disadvantage small business owners or employees with the most critical need for affordable, quality healthcare.

In addition to providing less comprehensive coverage, these multi-state plans would offer fewer consumer safeguards. In fact, employees covered by these association plans would not actually be protected in the state where they live since the regulations created for a specific plan could supersede state laws that protect consumers from rate increases and poor coverage. It's also concerning that the proposed rule is ambiguous about whether it will block states' ability to regulate AHPs. It's unacceptable for the Administration to prevent state insurance commissioners from enforcing rules they deem to be in the best interest of their state's small businesses and consumers.

State regulation of multiple employer welfare arrangements (MEWAs) has shown that such regulation is critical to protecting consumers from fraud or insolvency, and weakening states' abilities to enforce consumer protections could threaten the health and financial security of small business enrollees. Small business owners may turn to these types of association plans in search of lower cost options, but without protections in place to prevent fraud, they can find themselves the victim of scams, on the hook for costly medical expenses for issues they thought their plan covered.

Importantly, AHPs are not a new idea. In fact, states have already experimented with these plans with disastrous results. Claims that AHPs will be a boon to small employers are based on little evidence and in fact, much evidence exists to the contrary. An Urban Institute analysis of Oregon's regulation of AHPs prior to the ACA found that policies and lack of regulatory oversight increased the potential for adverse selection in the remaining small group market in the state.<sup>3</sup> This issue, as well as the concerns outlined above regarding fraud and abuse, is in part why a coalition of 17 state attorneys general recently submitted comments to the Labor Department opposing the proposed rule. As noted in the comments authored by state attorneys general, the proposed rule is also problematic in that it is contrary to and undermines the intent and structure of the ACA, and is also contrary to the Labor Department's longstanding interpretation of ERISA, which has been ratified by Congress.

Lastly, we are concerned about the proposed rule because we've heard directly from small business owners who are worried about the effects of AHPs on their insurance. Adam Rochon is the owner of Sequoia Employee Benefits and Insurance Solutions, a small independent insurance agency with fewer than 10 employees. Mr. Rochon says, "The bottom line is AHPs are only good as long as you don't get sick—your entire group could find itself without coverage if one person is faced with an illness or a medical condition. What's worse, if one small portion of the small group market gets these low rates, everyone else's rates go up in the existing insurance markets." As an insurance broker, Mr. Rochon has personally witnessed small businesses losing insurance on an association health plan when one employee got sick, such as an entire medical practice being kicked off their plan when just one employee fell ill.

Rather than pursuing policies that undermine the ACA, we encourage lawmakers to advance legislation that would stabilize healthcare marketplaces and protect the robustness of coverage options for small business owners and their employees. Legislation like the Undo Sabotage and Expand Affordability of Health Insurance Act, which was recently introduced by the ranking members of the Energy and Commerce, Ways and Means and Education and the Workforce Committees, would be an

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<sup>3</sup> <https://www.urban.org/sites/default/files/publication/33721/413279-Federal-and-State-Policy-Toward-Association-Health-Plans-in-Oregon.PDF>

important step in lowering premiums and protecting consumers. The legislation would extend the eligibility and size of tax credits that offset premiums, expand cost-sharing subsidies and prevent rules that would allow for AHPs or other types of junk insurance. It would also restore marketing funds for open enrollment, provide additional funding to states for educational outreach and creates a national reinsurance program to further stabilize marketplaces. These are some of the many common-sense solutions we support and believe legislators should pursue to stabilize and strengthen health coverage for the small business community.

In conclusion, the ACA is the first meaningful healthcare reform to help address the disparities in access to affordable, quality healthcare, and it's been particularly important for America's small businesses and self-employed entrepreneurs. However, we believe proposals like the proposed rule change will undo these hard-fought gains for our nation's job creators. We must do everything we can to ensure small businesses can access quality, affordable health coverage so they can focus on running their businesses. This means strengthening the small group and individual exchanges, rather than enacting rules that undermine the ACA and create instability in the health insurance markets. These policies make it easier for small businesses to offer health insurance, keeping themselves and their employees healthy and productive, which in turn benefits their bottom line. Access to affordable healthcare ensures that small business owners can continue to do what they do best—generate economic growth and create jobs.

Thank you for the opportunity to comment on this important issue for America's small business community. I would be happy to answer any questions.