

Beyond the Shutdown: Real Affordability vs. Endless COVID Subsidies

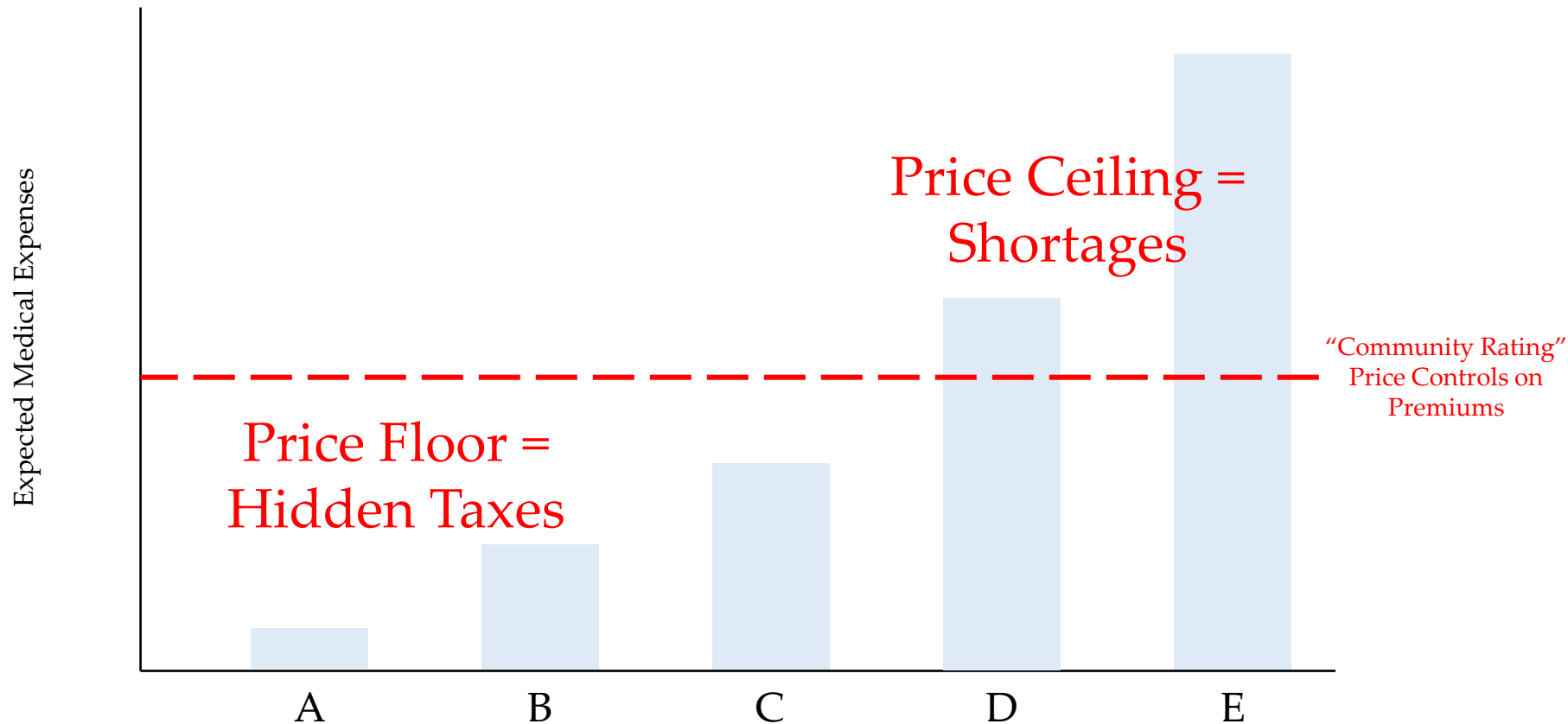
Michael F. Cannon (@mfcannon)
director, health policy studies

CATO
INSTITUTE

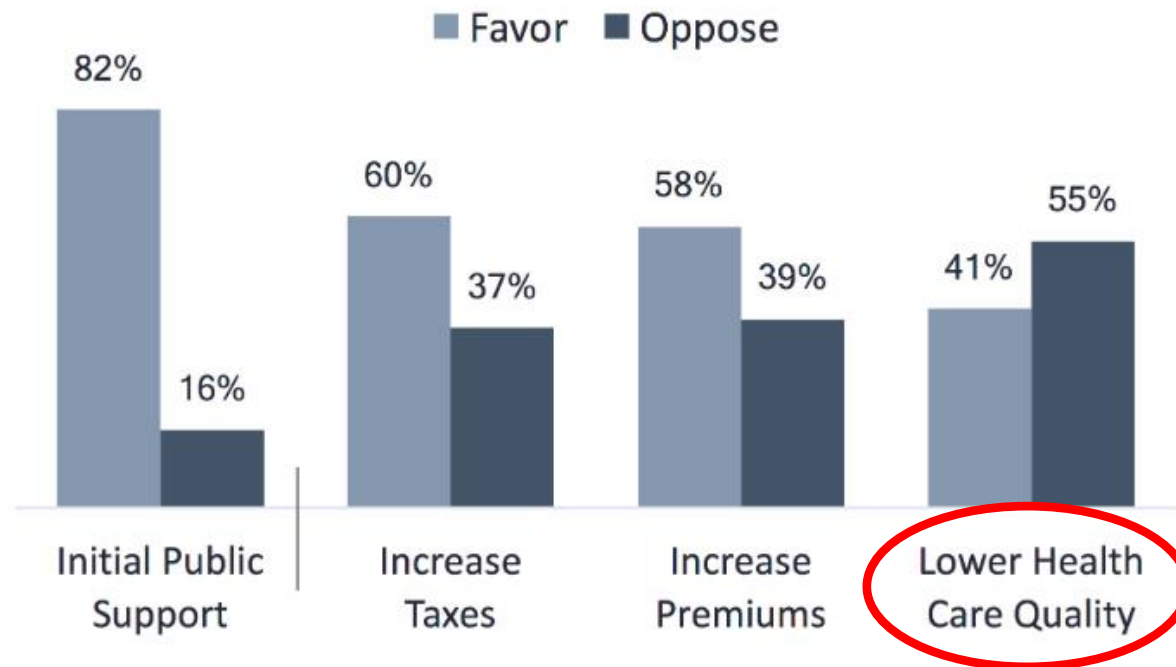


Overview

- ❑ Obamacare: inadequate, unaffordable coverage
- ❑ **Principle:**
 - If regulations make health insurance inadequate or unaffordable, consumers should get relief.
 - Both Trump and Obama have given consumers broad relief from Obamacare.
- ❑ **Combine:**
 - Obama's reasonable approach in U.S. territories
 - Trump's greatest health care victory (STLDI)



Support for ACA's Community-Rating Provision Among Democrats



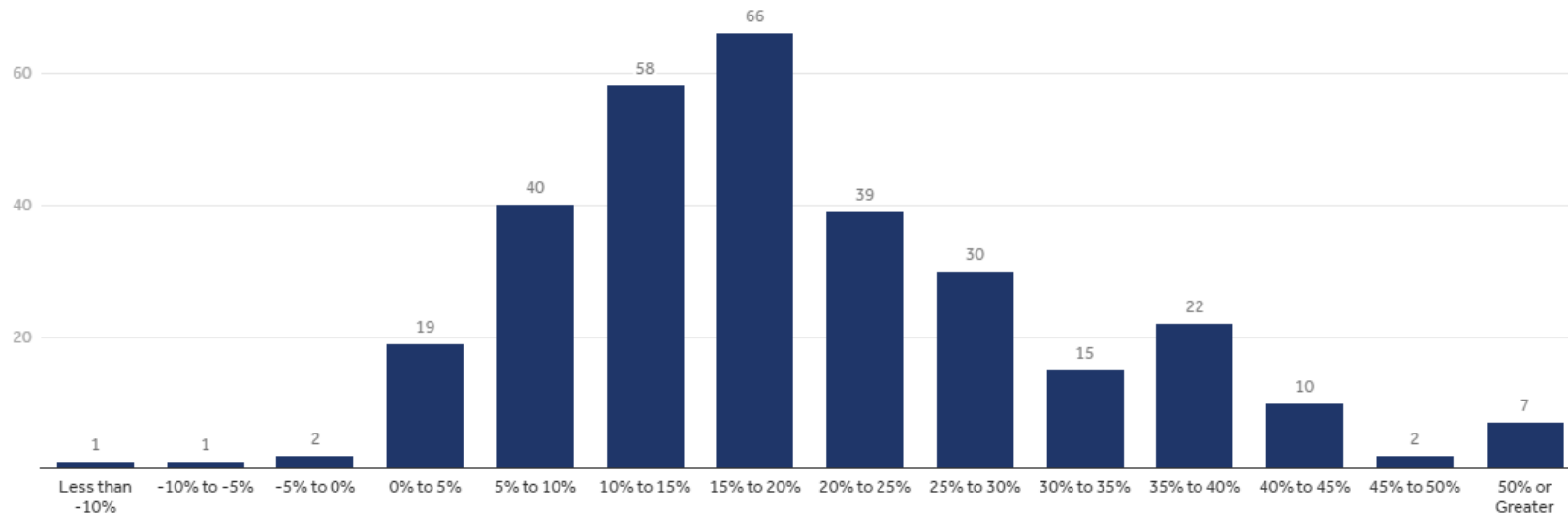
Source: Cato Institute/YouGov, February 22–23, 2017.

Hidden taxes

Hidden taxes

- ❑ Obamacare doubles premiums for many or most enrollees (CBO, [2019](#))
- ❑ Individual: “insurers are raising premiums by about 20% in 2026” (Peterson-KFF, [2025](#))
- ❑ Small-group: “median premium increase of about 11% in 2026” (Peterson-KFF, [2025](#))

Distribution of proposed 2026 rate changes among 312 ACA Marketplace insurers



Note: The median increase is about 18%.

Source KFF analysis of data from ratereview.healthcare.gov, California Department of Managed Health Care and insurer rate filings • [Get the data](#) • [PNG](#)

Shortages

Beyond the Shutdown: Real Affordability vs. Endless COVID Subsidies

Michael F. Cannon



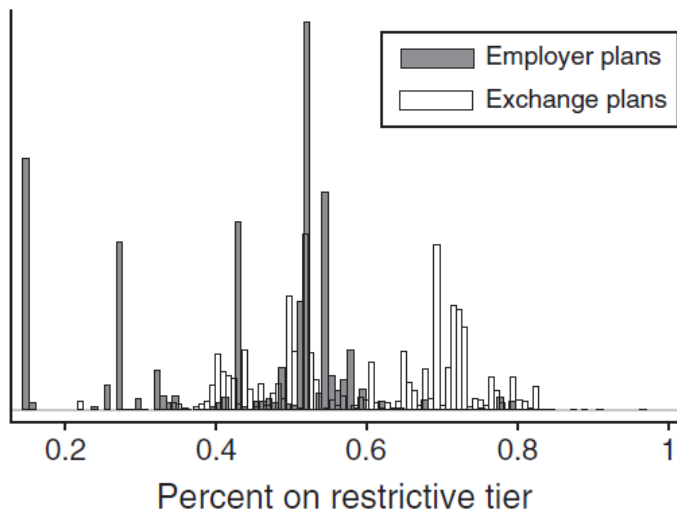
Regulation-induced shortages

- ☐ Drug coverage
- ☐ Prior authorization
- ☐ Narrow networks
- ☐ Deductibles, copayments
- ☐ Coinsurance
- ☐ Comprehensive plans
- ☐ Provider directories
- ☐ Customer service
- ☐ “completely undermines the goal of the ACA” (I Am Essential coalition, [2016](#))

Geruso et al. ([AEJ:EP](#), 2019)

- ❑ “Poor coverage for...medications”
- ❑ Higher cost sharing, including for generics
- ❑ “ten times more likely...to require prior authorization or step therapy for a generic”
- ❑ “twice as likely to not cover a generic”

Panel A. Assignment to restrictive tier;
specialty or higher



Panel B. Non-price hurdles to access

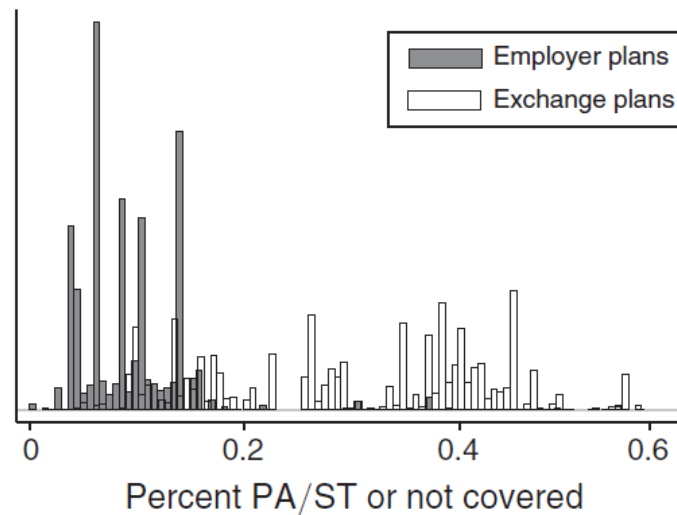


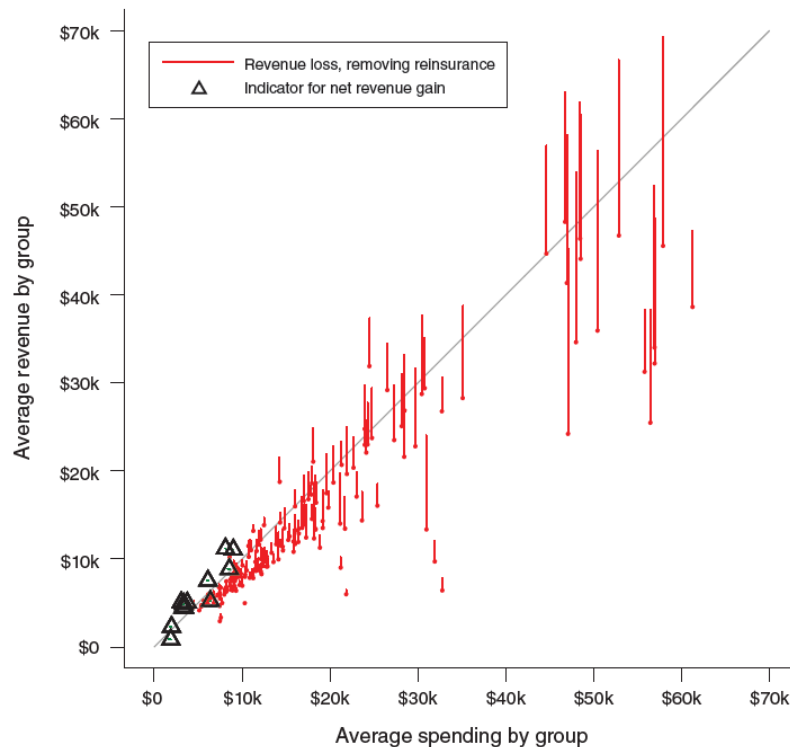
FIGURE 1. FORMULARY DATA: TIERING IN EMPLOYER AND EXCHANGE PLANS

Michael Geruso (Biden CEA)

- ❑ “backdoor discrimination”
- ❑ “undoes intended protections for preexisting conditions” ([2017](#))
- ❑ “economically sizeable”
- ❑ “healthy consumers cannot be adequately insured”
- ❑ “beyond any insurance carrier’s ability to control” ([AEJ:EP](#), 2019)



FIGURE 3. CHANGING INCENTIVES DUE TO REMOVAL OF REINSURANCE



Relief for consumers

Two options

- ❑ Codify 2014 Obama guidance exempting US territories from Obamacare, give everyone access
- ❑ Codify 2018 Trump rule regarding Obamacare-exempt “short-term” health plans

Beyond the Shutdown: Real Affordability vs. Endless COVID Subsidies

Michael F. Cannon



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

JUL 16 2014

Commissioner Gregory R. Francis
Office of the Lieutenant Governor
Division of Banking & Insurance
St. Croix Office
1131 King Street, 3rd Floor, Suite 101
Christiansted, St. Croix, VI 00820

Dear Commissioner Francis:

The Department of Health and Human Services (HHS) appreciates the many opportunities we had over the past several months to discuss the implementation of the Affordable Care Act with officials of the territories. I am writing today to clarify an issue that you and other officials of the territories have raised on a number of occasions—the applicability of certain Affordable Care Act provisions to health insurance issuers in the territories. We are committed to ensuring robust markets so that consumers have ample choice of high quality, affordable health insurance products and appreciate the opportunity to work with you on this critical issue.

Currently, the Department uses the existing Public Health Service Act (PHS Act) definition of “state” for new PHS Act requirements and funding opportunities included in title I of the Affordable Care Act. Under this definition, the new market reforms in the PHS Act apply to the territories. We have been informed by representatives of the territories that this interpretation is undermining the stability of the territories’ health insurance markets.

After a careful review of this situation and the relevant statutory language, HHS has determined that the new provisions of the PHS Act enacted in title I are appropriately governed by the definition of “state” set forth in that title, and therefore that these new provisions do not apply to the territories. This means that the following Affordable Care Act requirements will not apply to individual or group health insurance issuers in the U.S. territories:¹ guaranteed availability (PHS

¹ Our analysis applies only to health insurance that is governed by the PHS Act. It does not affect the PHS Act requirements that were enacted in the Affordable Care Act and were incorporated into the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code) and apply to group health plans (whether insured or self-insured), because such applicability does not hinge on, or rely upon the term “state” as it is defined in either the PHS Act or in the Affordable Care Act. Similarly, it also does not affect the PHS Act requirements that were enacted in the Affordable Care Act and apply to non-federal governmental plans. As a practical matter, therefore, PHS Act, ERISA, and Code requirements applicable to group health plans continue to apply to such coverage and issuers selling policies to both private sector and public sector employers in the territories will want to make certain that their products comply with the relevant Affordable Care Act amendments to the PHS Act applicable to group health plans since their customers – the group health plans – are still subject to those provisions. Group health plans remain subject to those provisions of the PHS Act that were enacted in the Affordable Care Act, including, *inter alia*, the prohibition on lifetime and annual limits (PHS Act section 2711), the prohibition on rescissions (PHS Act section 2712), coverage of preventive health services (PHS Act section 2713), and the revised internal and external appeals process (PHS Act section 2719).

Page 2 - Commissioner Gregory R. Francis

Act section 2702), community rating (PHS Act section 2701), single risk pool (Affordable Care Act section 1312(c)), rate review (PHS Act section 2794), medical loss ratio (PHS Act section 2718), and essential health benefits (PHS Act section 2707). Specifically, under this interpretation, the definition of “state” set forth in the PHS Act will apply only to PHS Act requirements in place prior to the enactment of the Affordable Care Act, or subsequently enacted in legislation that does not include a separate definition of “state” (as the Affordable Care Act does).

The Centers for Medicare & Medicaid Services (CMS) intends to issue regulations to affirm this interpretation and eliminate any text in the existing rules that is inconsistent with this interpretation (e.g., the definition of “state” that includes territories set forth in the rate review regulations at 45 CFR 154.102). Pending the completion of such rulemaking, CMS will apply this interpretation and will not subject health insurance issuers in the territories to the Affordable Care Act requirements at issue.

Because this interpretation applies prospectively, territories will not have to pay back to the federal government any grants that have been spent by the territories as of the date of this letter, such as those provided for rate review (section 2794 of the PHS Act) and for consumer assistance (section 2793 of the PHS Act). However, all unspent grant funding must be returned to CMS, because the interpretation of the law making the territories eligible to expend such funds is no longer in place.²

I look forward to continuing to partner with the territories to assure that there is sufficient competition in their health insurance markets to provide its residents with a diverse selection of affordable health insurance plans. I hope you will continue to keep in touch about this and other issues of mutual concern.

Sincerely,

Marilyn Tavenner
Marilyn Tavenner

² In addition, with respect to rate review grants, they would no longer be considered to have an “effective rate review program” since they would not be subject to PHS Act requirements enacted in the Affordable Care Act.

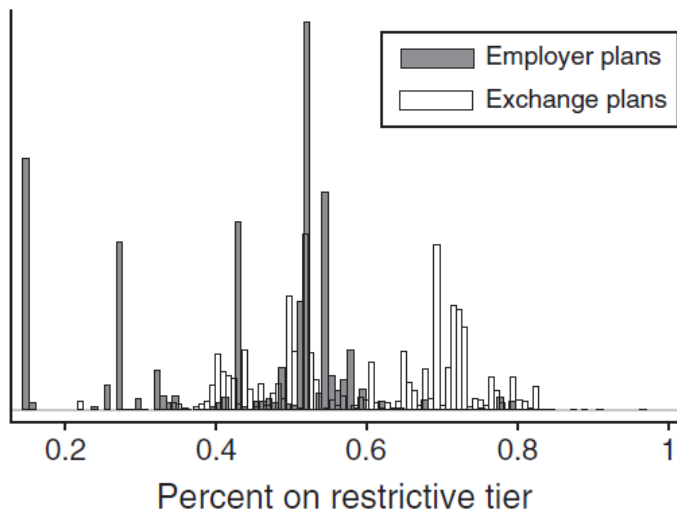
Territory Regulations and Correlation with ACA Reforms

| <i>Territory</i> | <i>Guaranteed availability of coverage</i> | <i>Community rating</i> | <i>Single risk pool requirement</i> | <i>Rate review</i> | <i>Medical loss ratio (MLR) requirement</i> | <i>Essential health benefits (EHB) requirement</i> |
|-------------------------------------|---|---|--|---------------------------|--|---|
| American Samoa | Unregulated | Unregulated | Unregulated | Some regulation | Unregulated | Unregulated |
| Guam | Unregulated | Modified community rating system | Unregulated | Regulated | Unregulated | Some mandatory coverage for screenings and autism treatment |
| Northern Mariana Islands | Unregulated | Modified community rating system | Unregulated | Regulated | Regulated | Unregulated |
| Puerto Rico | Regulated - Individual Plans | Modified community rating system | Unregulated | Regulated | Regulated | Regulated |
| United States Virgin Islands | Proposed regulation | Proposed modified community rating system | Unregulated | Regulated | Regulated for Medicare supplement policies ONLY | Some mandatory coverage |

Effects

- ❑ Comprehensive coverage (CBO, [2019](#))
- ❑ “lower deductibles or wider provider networks” (CBO, [2019](#))
- ❑ Premiums 50% below lowest-price Obamacare plans (CBO, [2019](#))
- ❑ Choice
- ❑ Secure coverage

Panel A. Assignment to restrictive tier;
specialty or higher



Panel B. Non-price hurdles to access

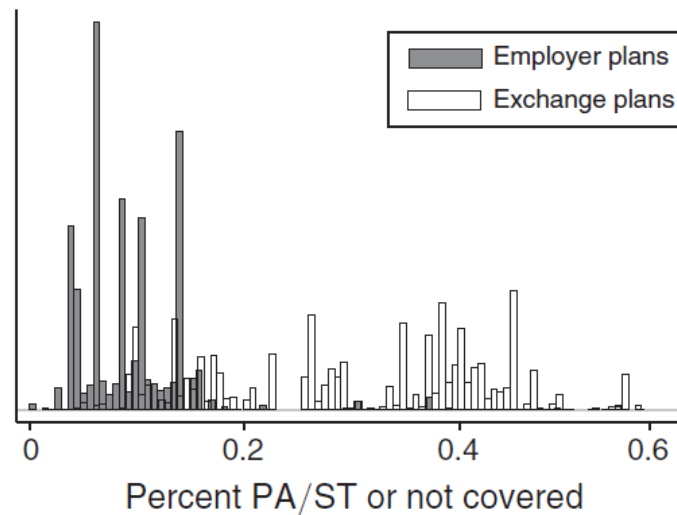


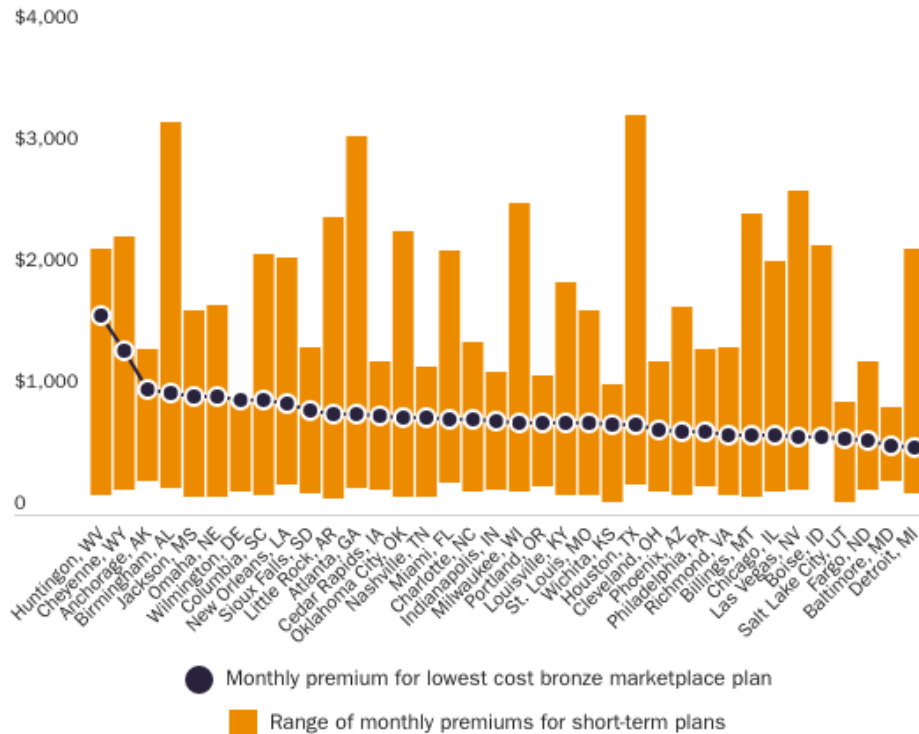
FIGURE 1. FORMULARY DATA: TIERING IN EMPLOYER AND EXCHANGE PLANS

Beyond the Shutdown: Real Affordability vs. Endless COVID Subsidies

Michael F. Cannon



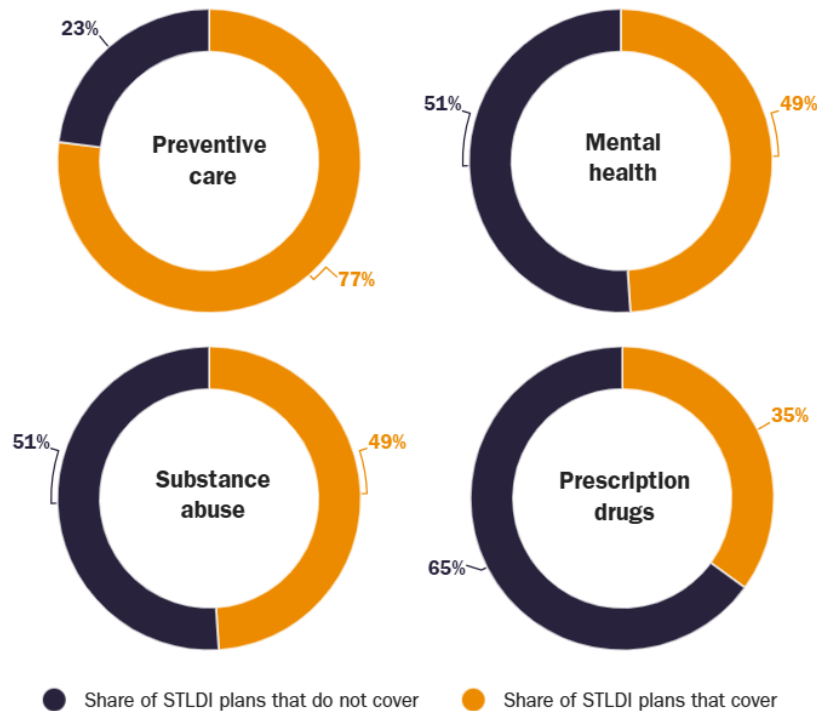
Short-term plan premiums often lower than lowest-cost bronze ACA plan premium (64-year-old female)



Source: "Health Insurance Marketplace Calculator," Kaiser Family Foundation, accessed September 14, 2023. for ACA-compliant plan premiums; eHealth and Agile Health Insurance for short-term policy premiums and features.

Short-term plans free consumers to choose what coverage they purchase

Percentage of short-term plans that cover various types of medical expenses

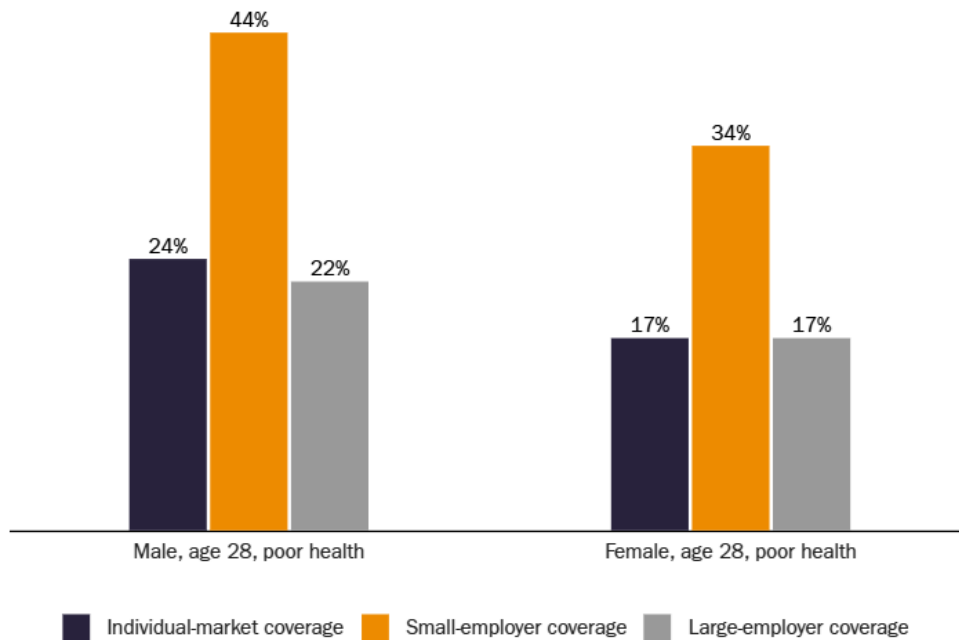


Sources: eHealthInsurance; and Agile Health Insurance.

Notes: Percentages are weighted averages across the 36 states that offer short-term health plans; STLDI = short-term limited duration insurance.

For enrollees in poor health, individual-market coverage is similarly or more secure than employer coverage

Probability of uninsurance after a year of continuous coverage by coverage type, 2000–2004, percent



Source: Mark V. Pauly and Robert D. Lieberthal, "How Risky Is Individual Health Insurance?," *Health Affairs* 27, no. 1 (2008).

Note: Assumes family income of \$50,000 annually, expecting a 4 percent increase in income.

What about Obamacare?

- ❑ Still available
- ❑ Enrollees would pay the same share of income
- ❑ Long-term reduction in Obamacare premiums
- ❑ Obamacare's political popularity would determine funding levels
- ❑ Consistent with Arrow ([1963](#))

Further reading

- ❑ Michael Geruso, "[Screening in Exchanges: Some Facts and Findings from Geruso, Layton, Prinz \(2016\)](#)," Presentation at Penn LDI HIX Conference, September 2017.
- ❑ Michael Geruso et al., "[Screening in Contract Design: Evidence from the ACA Health Insurance Exchanges](#)," *American Economic Journal: Economic Policy* 11, no. 2 (May 2019).
- ❑ Michael F. Cannon, "[Is Obamacare Harming Quality? \(Part 1\)](#)," *Health Affairs Forefront* (blog), Health Affairs, January 4, 2018, and "[How to Ensure Quality Health Coverage \(Part 2\)](#)," *Health Affairs Forefront* (blog), Health Affairs, January 5, 2018.
- ❑ Michael F. Cannon, "[Restrictive Government Regulations Are Strangling Health-Insurance Options in Florida](#)," *Miami Herald*, November 7, 2022.
- ❑ Michael F. Cannon, "[Biden Short-Term Health Plans Rule Creates Gaps in Coverage: Rule Would Deny Care after Patients Fall Ill](#)," Policy Analysis no. 970, Cato Institute, March 14, 2024.
- ❑ Michael F. Cannon, "[Kenneth Arrow's 1963 Article on Health Care Doesn't Say What You Think](#)," *EconLib*, April 7, 2025.



1000 Massachusetts Avenue, NW
Washington DC 20001
www.cato.org | 202-842-0200