



December 8, 2009

Senator Harry Reid
Majority Leader
522 Hart Senate Office Building
Washington, D.C. 20510

Senator Mitch McConnell
Minority Leader
361A Russell Senate Office Building
Washington, D.C. 20510

Dear Senators Reid and McConnell:

As the Senate continues to debate the future of comprehensive healthcare reform, the National Federation of Independent Business, the nation's leading small business association, is writing in opposition to the Patient Protection and Affordable Care Act (H.R. 3590).

When evaluating healthcare reform options, small business owners ask themselves two specific questions. First, will the bill lower insurance costs? Second, will the bill increase the overall cost of doing business? If a bill increases the cost of doing business or fails to reduce insurance costs, then the bill fails to achieve their No. 1 goal – lower costs.

In both cases, the Patient Protection and Affordable Care Act (H.R. 3590) fails the small business test and, therefore, fails small business. The most recent CBO study detailing the effect that H.R. 3590 will have on insurance premiums reinforces that, despite claims by its supporters, the bill will not deliver the widely-promised help to the small business community. Instead, CBO findings report that the bill will increase non-group premiums by 10 to 13 percent and result in, at best, a 2 percent decrease for small group coverage by 2016. These findings tell small business all it needs to know – that the current bill does not do enough to reduce costs for small business owners and their employees.

Despite the inclusion of insurance market reforms in the small-group and individual marketplaces, the savings that may materialize are too small for too few and the increase in premium costs are too great for too many. Those costs, along with greater government involvement, higher taxes and new mandates that are disproportionately targeted at small business and are being used to finance H.R. 3590, create a reality that is worse than the status quo for small business. The shortcomings of the Patient Protection and Affordable Care Act include:

A New Small Business Health Insurance Tax

Unlike large businesses, which self-insure and find security under the blanket of ERISA, most small businesses are only able to find and purchase insurance in the fully-insured marketplace. The Senate bill includes a new \$6.7 billion annual tax (\$60.7 billion over 10 years) that falls almost exclusively on small business because the fee is assessed on the insurance companies. CBO's most recent study reinforces those costs will ultimately be passed on to their consumers, leaving the cost to be disproportionately borne by small business consumers in the individual and small-group marketplace whose only choice is to purchase those products or forgo insurance altogether.

A New Mandate that Punishes Employers, Employees and Hinders Job Creation

Employer mandates fail employers and employees in two ways. First, mandates do nothing to address the core issue facing small business – high healthcare costs. Second, mandates destroy job creation opportunities for employees. The job loss, whether through lost hiring or greater reliance on part-time employees, harms low-wage or entry-level workers the most. The employer mandate in H.R. 3590 sets up potentially troubling outcomes for this sector of the workforce. The multiple penalties assessed on full-time workers will most certainly result in a reduction of full-time workers to part-time workers and discourage the hiring of those entrants into the workforce who might qualify for a government subsidy, hardly an outcome that contributes to a greater insured population.

A Poorly-Structured Small Business Tax Credit

As structured, the small business tax credit will do little, if nothing, to propel either more firms to take-up coverage or produce greater overall affordability. Due to its short-term temporary nature and the limitations based on the business' average wage, its benefit is, at best, a temporary solution to the long-term cost and affordability problem. A tax credit that is poorly structured is not going to provide sustainable and long-term relief from high healthcare costs, and the recent CBO finding that the tax credit would benefit only 12 percent of the small business population illustrates its lack of effectiveness.

A Benefit Package that is Too High a Hurdle for Small Business

NFIB has voiced concern over establishing a benefit threshold that is too high a price tag for small businesses to meet. Small businesses are especially price sensitive. They need purchasing choices that provide the flexibility in coverage options that reflect their marketplace and business needs. If Congress doesn't adjust the actuarial value standards in the legislation, what may be affordable this year may be unaffordable next year. As a result, small business owners will be at risk of having to drop coverage due to cost increases that outpace their healthcare budgets.

Destructive Rating Reforms and Phase-In Timelines that Threaten Affordability for All

NFIB supports balanced federal rating reforms that protect access and affordability, regardless of an individual or group's health status. However, the excessively tight age rating (3:1) in H.R. 3590 will increase more costs than it will decrease, and make coverage unaffordable for the very populations that are most beneficial to the insurance pool – the young and the healthy. Independent actuaries have analyzed the negative impact of such tight bands and have indicated that there will be devastating effects to the long-term viability of a pool without action to correct this rating imbalance.

Additionally, to prevent volatile spikes in insurance premiums, also known as “rate shock,” federal rating reforms must be appropriately applied to all marketplaces and phased in over a responsible period of time. If this is not done, then certain plans, including “grandfathered plans,” will utilize different rating practices when underwriting risk, which can create adverse selection issues. Those selection problems will have a striking negative impact on the new exchanges – exchanges that are meant to improve, rather than decrease, affordability for small business and individuals.

National Plans that Provide Limited Promise for Success

Leveling the playing field for small business starts with allowing uniform benefit packages to be purchased across state lines. If done right, this can provide a greater security that, as people change jobs and move from state to state, they can keep the benefit plan that meets their healthcare needs. National plans would be particularly helpful for states with smaller populations and where consumers lack a robust marketplace with choice and competition for private plans. Specifically, the state “opt-out” language in the Patient Protection and Affordable Care Act would create more disincentives than incentives for carriers to embark on these new opportunities. If the national plan section is not significantly restructured to make national plans a viable option, then these new opportunities will never materialize for small business.

Threatens Flexibility and Choice for Employers and Employees

Small employers need more affordable health insurance options and new alternatives for employers to voluntarily contribute to individually-owned plans. Provisions also need to be structured to insure that options are widely available to both employers and employees. The simple cafeteria plan language in H.R. 3590 excludes the owners of many “pass-through” business entities from participating in these arrangements. If owners are unable to participate in the plan, they will be less likely to provide insurance to their workforce. Finally, small business needs the freedom and flexibility to preserve options that are already proven to work. Prohibiting the use of HSA, FSA and HRA funds to purchase over-the-counter medications, along with the \$2,500 limit on FSA contributions, diminishes that flexibility and threatens to further limit the options employers have to provide meaningful healthcare to their employees.

New Paperwork Costs on Small Businesses

The cost associated with tax paperwork is the most expensive paperwork burden that the federal government imposes on small business owners. The Senate bill dramatically increases that cost with a new reporting requirement that is levied on business transactions of more than \$600 annually, leaving small business buried in paperwork and increasing their paperwork compliance expenses.

An Unprecedented New Payroll Tax on Small Employers

Since its creation the payroll taxes that fund the Medicare programs have not been wage-based and are dedicated specifically to funding Medicare. The Senate bill changes the nature of the tax and creates a precedent to use payroll taxes to pay for non-Medicare programs.

The Absence of Real Medical Liability Reform

NFIB strongly supports medical liability reform as a means to both inject more fairness into the medical malpractice legal system, and to reduce unnecessary litigation and legal costs. Taking serious steps to adopt meaningful medical liability reform is a significant step toward restoring common sense to our medical liability litigation system. It also is especially critical to improving access to healthcare for those living in rural areas, where it is becoming increasingly difficult for those in need to locate specialists such as OB/GYNs and surgeons.

The Creation of a New Government-Run Healthcare Program

A government-run plan will drive the private healthcare marketplace out of business. Private insurers will be unable to compete in a climate where the rules and practices are tilted in favor of a massive government-run plan. This means millions could lose their current coverage. This will decrease choice and increase costs. On both accounts, the government-run plan will leave small business with a single option – the government-run plan, which is the exact opposite outcome small businesses want from healthcare reform.

There is near universal agreement that, if done right, small business has much to gain from healthcare reform. But if it is done wrong, then small business will have the most to lose. The Patient Protection and Affordable Care Act, which is short on savings and long on costs, is the wrong reform, at the wrong time and will increase healthcare costs and the cost of doing business. NFIB remains committed to healthcare reform, and urges the Senate to develop common sense solutions to lower healthcare costs while ensuring that policies empower small business with the ability to make the investments necessary to move our economy forward.

Sincerely,

A handwritten signature in black ink that reads "Susan Eckerly". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Susan Eckerly
Senior Vice President
Public Policy