



Small Business Remarks on the Implementation of PPACA
Dan Murray: Kansas State Director, National Federation of Independent Business
Senate Public Health & Welfare Committee
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Good afternoon Madam Chair and members of the Committee. My name is Dan Murray and I am the State Director of the National Federation of Independent Business/Kansas. NFIB is the state's leading small business organization representing small and independent businesses. A non-profit, nonpartisan organization founded in 1943, NFIB represents the consensus views of its nearly 4,000 members in Kansas.

Since 1986, the National Federation of Independent Business' members have said that healthcare costs are their No. 1 concern. In a recent NFIB poll, nearly 81 percent of small business owners say that finding affordable healthcare for themselves and their employees is a challenge. Fifty percent of small business owners say they anticipate having difficulty keeping up with the cost of healthcare over the next four years. And, of the nearly 46 million Americans without healthcare, more than 26 million are small business owners, employees and their dependents.

As you can see, the affordability of health insurance is a massive concern for small business. Unfortunately, the PPACA does not address the issue of cost for small business. Indeed, we believe the act will increase our cost of providing health insurance benefits.

I do not want to "re-litigate" the Patient Protection and Affordable Care Act (ACA) with my testimony, but would like to point out the numerous problems that the law creates for small business, including: higher costs, greater administrative burdens, fewer healthcare choices, and competitive disadvantages compared to big business.

1. **The individual mandate tax is unprecedented.** The individual mandate tax compels employees to buy insurance or pay taxes. Unless employers increase labor costs or offset this change, affected employees will feel a decrease in take-home pay.
2. **The employer mandate raises costs and complicates business.** Businesses with 50 or more full-time employees or FTE's face employer mandate penalties. Thus, employer mandate gives employers a motive to employ fewer than 50 employees. Businesses can avoid the mandate by shrinking or staying below 50, outsourcing, and by replacing full-time employees with part-timers.
3. **New benefits raise costs.** New benefits for policyholders, including bans on annual and lifetime payout limits, have increased the cost of insurance.
4. **New taxes raise costs.** A) The ACA imposes the health insurance tax (HIT) on insurers. CBO expects insurers to pass the tax along to businesses and consumers. NFIB estimates that the HIT will reduce private sector employment. B) Owners of unincorporated "pass-through" businesses are vulnerable to the ACA's 0.9% Medicare surtax on wage/salary income. C) Pass-through business owners with certain levels of gross income face a 3.8% tax on investment income. D) Pharmaceutical and Medical Device taxes will be passed along to small businesses through higher premiums. E) FSAs and HSAs, key to small businesses, have been curtailed.
5. **ACA is especially expensive for small business.** A number of the ACA's provisions (e.g. essential health benefits, health insurance tax) apply only to the fully-insured market (most small businesses and individuals) but not to the self-insured market (most big business, labor unions, and governments). Already, small businesses, on average, pay about 18 percent more for health insurance than their larger counterparts for the same group of services. The ACA is exacerbating this disparity.

The ACA is here to stay for the foreseeable future. Unfortunately, the law dumps a multitude of burdens on the laps of our job creating small businesses. We respectfully ask, as you deliberate implementing new policies, that you avoid saddling small business with additional taxes and regulations. Rather, we urge you adopt policies which may help to mitigate the negative impact of the ACA on our fragile small business economy.

A new drug tax raises costs.

A medical device tax raises costs.

There's a new tax on tanning salons.

Employees can't use FSAs or HSAs for OTC drugs.

Some costs hit small business, but not big business.

Enforcement is arbitrary and unpredictable.

Grandfathering restrictions boost costs.

Businesses face years of changing regulations.

Employees will bounce between ESI and Medicaid.

Some insurance markets already disappearing.

The small-business tax credit is small, cumbersome, and temporary.

Congress repealed the 1099 expansion.

The CLASS program has been halted.

The Patient Protection and Affordable Care Act (PPACA) creates numerous problems for small business: higher costs, greater administrative burdens, fewer healthcare choices, and competitive disadvantages vis-à-vis big business.

Pharmaceutical companies will pay a new tax on brand-name prescription drugs but the tax will be passed along to insurance purchasers through higher premiums.

Medical device manufacturers will pay a new 2.3% tax on their products but will pass the tax on to insurance purchasers through higher premiums. An industry analysis suggests losses of more than 43,000 jobs and over \$3.5 billion in compensation losses.

The law imposes a 10% tax on sales by tanning salons. No other industry has to pay this tax or anything comparable.

Employees can no longer use flexible spending accounts (FSAs) and health savings accounts (HSAs) to purchase over-the-counter (OTC) medications without a prescription. Unless businesses increase total compensation to offset this effective increase in taxes, employees lose spending power.

PPACA is especially expensive for small business. A number of PPACA's provisions (e.g., essential health benefits, the health insurance tax) apply only to the fully-insured market (most small businesses and individual policyholders) but not to the self-insured market (most big businesses, labor unions, and governments).

The Secretary of HHS has granted thousands of waivers to certain PPACA provisions without specifying the criteria for approval and disapproval. The result is to saddle some, but not all, employers with large expenses, and do so in an unpredictable manner.

PPACA allows some small businesses to escape certain mandates by "grandfathering" their existing health insurance policies. However, extensive restrictions mean that relatively few businesses can take advantage of grandfathering. HHS estimates that up to 80% of small employer plans will lose grandfathered status by 2013.

PPACA left many of the most important operational details to regulators. For years, businesses will have to devote considerable resources to monitoring and navigating regulatory changes. Few small businesses have human resources, legal, or accounting departments to track and plan changes.

Employees whose household incomes drop below 138% of the federal poverty level (FPL) are supposed to shift into Medicaid. As a family's income rises and falls, household members may be shifted repeatedly between Medicaid and employer-sponsored insurance (ESI).

PPACA has begun to wipe out certain health insurance markets. These include child-only policies, limited-coverage "mini-med" policies, and (in some areas) individual policies that formerly helped some small business employees to gain coverage. 12% of small-business owners report that their policies have been discontinued or cancelled.

According to the General Accountability Office (GAO), in 2010, only 170,300 small employers claimed the health insurance tax credit – 4% of the number cited by PPACA supporters. On average, businesses claiming the credit received \$2,748 – a trivial amount compared with insurance costs. Navigating the credit involves considerable red-tape, time, and expense. (See CribSheet #11-2.)

Two problems have subsided. PPACA originally included an enormously expensive expansion of the IRS Form 1099 program. NFIB successfully led the drive to repeal this provision.

The CLASS Act was a long-term care scheme included in PPACA as an accounting trick to decrease the apparent cost of PPACA. The federal government has since recognized that CLASS is actuarially unsound, and the program has been discontinued. The House has voted to repeal this provision; the Senate has not yet acted.

(This CribSheet is edited from the original, published 3/15/12)



The individual mandate tax is unique in American history.

The mandate tax hits wages or profits

The employer mandate hits businesses.

The employer mandate kills jobs.

The mandate increases red-tape.

The mandate strikes employee privacy.

Irrelevant factors trigger employer penalties.

PPACA has already added costly benefits.

"Essential Health Benefits" make costs more unpredictable.

Small businesses will pay a Health Insurance Tax (HIT).

Pass-through business owners face a "Medicare" wage/salary tax.

Pass-throughs also face a "Medicare" investment tax.

The Patient Protection and Affordable Care Act (PPACA) creates numerous problems for small business: higher costs, greater administrative burdens, fewer healthcare choices, and competitive disadvantages vis-à-vis big business.

The individual mandate tax is unprecedented. PPACA established an individual mandate to buy health insurance and a penalty for not doing so. This was the first time in American history that the federal government ordered the general population to purchase a commercial product. Responding to the lawsuit by NFIB and 26 states, the Supreme Court refashioned the mandate and penalty into a choice between two options: buy insurance or pay a tax for failing to do so. (See [CribSheet 12-2](#).)

The individual mandate tax compels employees to buy insurance or pay taxes. Unless employers increase labor costs to offset this change, affected employees will feel a decrease in take-home pay.

The employer mandate raises costs and complicates business. Businesses with 50 or more full-time employees or FTEs face employer mandate penalties. One subsidized employee can trigger annual employer penalties of \$2,000, \$3,000, or more. (See [CribSheet #11-1](#).)

The employer mandate gives employers a motive to employ fewer than 50 employees. Businesses can avoid the mandate by shrinking or staying below 50, by outsourcing, and by replacing full-time employees with part-timers. NFIB is [leading](#) a drive to repeal this provision.

Employer mandate penalties depend on month-by-month changes in the number of full-time employees and part-time hours. This means time-consuming monitoring and paperwork.

Businesses subject to the employer mandate will receive periodic government reports on subsidized employees. The reports will inadvertently reveal personal financial data on employees' spouses and families, raising disconcerting privacy concerns and exposure to liability for employers. The IRS is attempting to remedy this intrusive, unworkable provision.

Employer penalties depend in part on private occurrences in employees' households: an employee's spouse losing a job, a divorce or separation, an employee's spouse's elderly relative moving into their house. Employers will not be entitled to know the details of what triggered the penalty.

New benefits raise costs. New benefits for policyholders have increased the cost of insurance. These include bans on annual and lifetime payout limits and an extensive list of free preventive services.

Insurance purchased in the fully-insured market (mostly small-group and individual policies) must cover essential health benefits (EHB) – a list of mandatory covered services. PPACA gives the Secretary of Health and Human Services virtually unfettered power to add items (and costs) to the package. Recent regulatory actions by the Secretary have blurred federal and state EHB responsibilities.

New taxes raise costs. PPACA imposes a health insurance tax (HIT) on insurers. CBO expects insurers to pass the tax along to businesses and consumers. The cost is \$87 billion through 2020 and several times that between 2021 and 2030. (See [CribSheet 12-3](#) for details.) NFIB [estimates](#) that the HIT will reduce private-sector employment by 125,000 to 249,000 jobs in 2021, with 59% of the losses coming from small business. NFIB is [leading](#) a drive to repeal this provision.

Owners of unincorporated "pass-through" businesses report business income on their household 1040s. Pass-throughs are vulnerable to PPACA's 0.9% "Medicare" surtax on wage/salary income above \$200,000 for individuals or \$250,000 for joint filers. This surtax is paid on top of the long-existing 1.45% Medicare payroll tax. Despite the name, the proceeds of the new tax will not go to Medicare.

Pass-through business owners with modified adjusted gross income over \$200,000 for individuals or \$250,000 for joint filers face a 3.8% tax on investment income (rents, dividends, interest, royalties, capital gains on property sales other than primary residence, etc.) above the threshold. Once again, revenues do not go to Medicare.

