



National **Retail** Federation
The Voice of Retail Worldwide

National Retail Federation Testimony

Hearing on

The Power of Transparency: Giving Consumers the Information They Need to Make Smart
Choices in the Health Insurance Marketplace

Committee on Commerce, Science and Transportation

United States Senate

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Chairman Rockefeller, Ranking Member Thune and honored members of the Committee, I thank you for the opportunity to appear before you today and to share our views regarding the Affordable Care Act (ACA), the need for greater transparency and the ACA's Summary of Benefits and Coverage (SBC), Coverage Examples and Uniform Glossary provisions. My name is Neil Trautwein and I am a vice president and Employee Benefits Policy Counsel with the National Retail Federation (NRF).

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's ***Retail Means Jobs*** campaign emphasizes the economic importance of retail and encourages policymakers to support a **Jobs, Innovation and Consumer Value Agenda** aimed at boosting economic growth and job creation. www.nrf.com

NRF supports effective implementation of the Affordable Care Act, despite our continued concerns about the law itself. We remain greatly worried by the fast-approaching deadlines for key issues affecting coverage in every market, especially in light of the steady torrent of regulations from the Administration. Our nation cannot afford for the ACA to stumble out of the starting gate. We fear that as time diminishes between now and January 2014, a cascade of last minute regulations will create confusion and thus could encourage more employers to back out of coverage.

NRF and ACA Implementation

NRF has been closely engaged in the regulatory process ever since the ACA was signed into law. We have met numerous times with regulators and have submitted written comments on key concerns. We have assisted in submitting joint coalition comments as well. We have not been litigants against the ACA and also did not submit amicus comments in the ACA case before the Supreme Court.

We credit the regulatory agencies¹ for working hard and fairly cooperatively to implement the ACA, a difficult task by any measure. The Administration has been properly solicitous of the greater retail industry, both because of our industry's important role in the economy as well as the nature of retail employment. Many retail and restaurant employees do not fit neatly into full and part-time categories and compliance with the unprecedented levels of change under the ACA will be particularly challenging.

This is where we find the hard intersection between the promise of transparency to help employers and consumers find better value in health care and coverage and employers straining to their new responsibilities under the ACA, some beginning as soon as June this year. There is the danger of crowding out employer enthusiasm for driving better quality and lower cost health care through initiatives from the Pacific Business Group on Health, along with my fellow

¹ Departments of Health and Human Services, Labor and Treasury.

panelist from NCQA and many others. NRF strongly supports these initiatives. It is important in our view to preserve and strengthen these employer-led reform efforts, even as implementation of the ACA continues.

Changing Behavior

Change at any level is difficult. We are attempting to retrain people to seek the better quality health care options. Sometimes, less (but more effective) care is better than more care. I recall the frustration of a former member of mine in a different association (Francois de Brantes, then of GE, now of Bridges to Excellence) saying that he could place neon exit signs leading to better quality health care providers, but most employees would rather stick with their old, inferior quality and more expensive providers instead.

We humans are stubborn in our habits, good or bad. Transparency and awareness of better interest – quality and cost both – is likely the best tool toward building better consumers of health care and coverage.

Summary of Benefits and Coverage

Health benefits are the biggest component (next to wages) in employee compensation. Employers have struggled mightily to help employees understand and get the best value from their benefits. Distribution of Summary Plan Description (SPD) documents are just the beginning. Employers have conducted countless employee briefings (both by company staff and outside experts, such as agents and brokers) among other efforts to help educate eligible employees. Many employers have built web-based resources to help guide employees through benefits issues.

The new Summary of Benefits and Coverage (SBC) requirement and Uniform Glossary are the latest manifestation of this employer objective: to help employees and dependents understand the content and extent of their coverage options. Employers were not entirely sure that the SBC was necessary and not just duplicative of the SPD. Still, the SBC with coverage examples and Uniform Glossary can be helpful tools for employers toward employee education.

Flexibility in distribution of the SBC is helpful. The ability to post electronically and to email SBC's (subject to notice and on-demand availability of paper copies) is efficient. Nevertheless, availability is one issue and comprehension is entirely another. How do we entice or compel employees and dependents to read and understand their benefits?

Some benefit designs seek to use financial interest – our wallets – to help lead our brains to better health care decisions. Results are encouraging but inconclusive. Ultimately though, we may need to look to our children and grandchildren to take this closer to heart and better interest. That awareness just might be forged in a generational crucible built as a consequence of the graying of America. It will not be a pain free process, unfortunately.

Retailers and other employers are particularly concerned by one element of unwarranted SBC compulsion: employer penalties for willful failure to distribute SBCs. These penalties are expensive – at \$1,000 per willful failure with daily penalties of \$100 – and when added to myriad other potential penalties and fees under the ACA, could tend to discourage employers

from offering coverage. We recommend that this Committee and the Congress rethink this portion of the SBC requirement.

In addition, we are concerned by the SBC requirement that SBC be made linguistically appropriate for populations where 10% or more are literate in a non-English language. This is an expansion of an old SPD requirement and in practice employers have adapted where necessary, for example to hold Spanish language briefings. Still, we fear that the new SBC requirements will add to carrier cost and thus to coverage cost, too.

Affordable Care Act and Employers

Change is coming to employer-sponsored health plans at a torrential pace. In testimony² last year to the House Ways and Means Subcommittee on Health, I warned that definitive regulatory guidance was needed at least by the first quarter of 2013. The regulatory pace has definitely picked up after November 2012.

We have received a lot of regulatory guidance – some 18,000 pages of regulations by some estimates – with two significant regulations on essential health benefits and health insurance market reform coming out just last week. Both the EHB and market reform provisions (especially the compression of age bands) very likely will add to coverage costs.

NRF has worked hard to help our members understand what their options and future responsibilities will be. I provided both majority and minority staff with a copy of the slides from a recent NRF webinar presentation on ACA compliance. Another is planned for March and likely will continue throughout the year. I spend a lot of time speaking to diverse retail and other employer audiences as well. The learning curve among retailers and other employers is steep and still growing.

NRF, Allied Coalitions and the Affordable Care Act

NRF has actively encouraged the fair and effective implementation of the ACA, despite our continued opposition to the law itself. We see no inconsistency between the two positions; we owe it to our members to help make the law as workable as possible so long as it remains the law of this land. We stand ready to assist any effort to improve upon implementation of the ACA.

We are engaged in a number of allied coalition efforts on ACA implementation. For example, NRF chairs the Essential Health Benefits Coalition³ (EHBC) and participates in the leadership of the Coalition for Choice and Competition⁴ (CCC) and Employers for Flexibility in Health Care (EFHC). The number of coalitions addressing aspects of ACA implementation has grown so much as to require a degree of coordination between them. NRF established and chairs the Employers' Health Care Clearinghouse, which meets on a monthly basis to do just that.

² September 12, 2012

³ www.ehbcoalition.org

⁴ www.choiceandcompetitioncoalition.org

These coalitions are deeply substantive and deal with specific ACA implementation concerns. They also have served a useful role in developing and coordinating views and comments among allied employer interests.

Conclusion

Again, NRF greatly appreciates the opportunity to appear before you today. In sum, we urge this Committee and Congress to continue to encourage transparency in health care to help drive better quality and lower cost care and coverage.

At the same time, we urge you to guard against the pace of ACA implementation and the consequent potential to drive employers away from providing coverage. Retailers and other employers can and should be powerful advocates for positive change. But, in most cases, health care and health benefits are not our stock in trade or business. It is in our best interest to keep our employees healthy and at work, but not at any cost. The ACA will – at a minimum – pressure our ability to continue to provide coverage and help drive positive change.

We hope to work with you to help mitigate these effects. NRF stands ready to help the Administration and Congress make the ACA more workable, so long as it remains the law of this land.