Testimony of Alan Schulman
on Behalf of the Council for Affordable Health Coverage and
the National Association of Health Underwriters
before the U. S. House of Representatives Small Business Committee
Contracting and Workforce Subcommittee
Hearing on "ObamaCare and the Self-Employed: What About Us?"
March 6, 2014

Good Morning. My name is Alan Schulman and I am a small-business owner from Rockville, Maryland. I own an insurance agency called Insurance Benefits and Advisors, and like more than 20 million other Americans, I am self-employed. I am here on behalf of my professional association, the National Association of Health Underwriters (NAHU), which represents approximately 100,000 health insurance agents, brokers, general agents, consultants and other employee benefit specialists from all over the United States, as well as the Council for Affordable Health Care, a broad based coalition of insurers, employers, patients, consumers, pharmaceutical manufacturers and providers—united in the belief that health costs are too high and must come down so that American living standards can start growing again.

I will focus my remarks today on three key issues:

1. The major impact of the health reform law for small businesses and the self-employed won't be fully felt until later this year or in 2015;
2. ACA's mandates, rules and changes to insurance will increase costs for these employers, making coverage options less attractive for employers and their workers; and
3. There are practical and bipartisan solutions to the problems faced by small businesses.

First of all, I would like to thank the House Small Business Committee and, in particular, Chairman Graves, Ranking Member Velazquez, Subcommittee Chairman Hanna and Ranking Member Meng for inviting me here today and for electing to hold this public hearing. Often, the impact of the Patient

Protection and Affordable Care Act (PPACA) on small-business owners like me and many of my clients is down-played because we are not subject to the employer mandate. Really though, this law's impact on all businesses extends far beyond the mandate, with small business owners hit particularly hard. The health plan design changes, new taxes, premium increases, new options and related new rules for small businesses all are being phased in this year—2014. For us, no new requirements have been delayed.

I appreciate your committee's recognition of the fact that small businesses and self-employed people are in the middle of a seismic shift due to health reform and your bipartisan willingness to bring this fact to the public's attention.

Upheaval and Uncertainty Due to Changing Regulatory Landscape

As I mentioned, I am the owner of a small business, but I also have a client base composed of many other small-business owners. I serve the health coverage needs of my clients by helping them purchase, administer, service and utilize health insurance policies and other related benefits. Almost all of my clients are either self-employed individuals or businesses with less than 50 employees, which, as you know, is representative of the vast majority of American employers. I also represent individuals and companies all over this region, with about 50 percent of my clients based in Maryland, 25 percent in Virginia and 25 percent located right here in the District of Columbia.

Small businesses and self-employed individuals will be experiencing many changes, both large and small, this year to their health plans, and in turn this will impact how they will offer benefits to their employees, or if they will even be able to offer them at all. As I mentioned, the vast majority of new

requirements will hit the small business owner at some point during 2014. Small employers renew their health plans year round, and almost all of the new requirements that affect us take effect on the anniversary of a small business's plan year in 2014.

Last year, a variety of circumstances, including new regulations from HHS about small business health plan participation requirements, a push from health insurance issuers, and the Administration's new policy to extend health plan options the small employer liked but are bound to change and the resulting state reactions to that policy directive, caused a huge number of small employers to change the anniversary date of their health plans to December 1.

Amongst my client base, 80 percent of small employers made that switch. What that means is that for these clients and their employees, the major changes will take effect December 1, 2014. But what it also means is that the major impact of the law on small employer health plan design options and related costs will begin this coming August, September and October, when these employers begin the process of reviewing their new health plan options for the year ahead. In most cases, small employers will see at least an estimate of their new premium rates and the reform-required changes to their plan for the first time in September of 2014, but no later than next October 15. That's when self-employed individuals and companies with up to 50 full-time employees will need to start making some important decisions about their benefit plans, including, what kinds of plans they offer, who they offer coverage to, how much they pay towards coverage for employees and their dependents and whether or not to continue offering coverage at all.

Many in the small employer community don't know what's about to hit them, but there are still quite a few very small employers who are redoing their benefit plans for 2014 right now and are currently experiencing some of the consequences of the new law and its regulations—both intended and unintended.

Group Versus Individual Coverage

For self-employed individuals, one of the biggest and unexpected changes is trying to figure out if you are eligible to purchase group health insurance at all. Before health reform, in some states if you were self-employed you had to purchase individual coverage, but in others you were considered a small group. By extending the definition of a small group from 1-100 most self-employed small business owners (many of whom work with their family members, such as a husband/wife group) assumed they would have access to all of the benefits group insurance provides. In general, these people are not subsidy eligible, and given all of the problems with the exchanges, few of them are very excited about using that health coverage option and were looking forward to group coverage. However, today their status is very unclear. The way the implementing regulations have been written, these employers are not eligible for SHOP coverage. If they are incorporated as an S-Corp, which many are, then the new rules require that they must buy individual coverage. At first, it appeared that if the business was a C-corp, then they would be considered a group because the family members may be treated as employees, but guidance released from the CMS just this past Friday indicates that these employers may not be groups at all. Naturally, all of this confusion is problematic for small employers, particularly for

people like me who are trying to advise people about their legal options. It's pretty tough when those options change on a day-to-day basis!

Increased Costs for Small Businesses

Another very big and unexpected change for small employers nationwide is the impact of modified community rating and the way HHS has decided to rollout out its related age bands for fully-insured small group plans. There's been a lot of studies done and attention paid to the rate shock small employers are going to feel this year due to the new health insurance premium tax and moving to age bands to just three to one nationwide this year, given that 42 states previously had much wider age bands. Bipartisan legislation, H.R. 763, would repeal the annual fee on health insurance providers enacted by PPACA and the bipartisan LIBERTY Act (Letting Insurance Benefit Everyone Regardless of Their Youth), H.R. 544, would fix the narrow age band aspect of the problem by allowing states to determine the age discount in their insurance market. Should a state fail to act, the legislation establishes a five to one rating band, which better reflects the correlation between age and health care costs. However, in addition to the price impact of the law's current very narrow age bands, there is also a serious emerging problem for small employers due to the way HHS has chosen to implement the age band requirements.

Before health reform, small group health insurance rates did reflect the overall age breakdown of all the employees in the group. However, employers and employees never saw that breakdown because they received what is known as a "composite rate" so that all employees in the group were charged the same

for their coverage choices. Presenting employers with a composite rate was not just an important administrative convenience. It was also an important protection for both the employer and employees against age discrimination. Now, due to the way the age band rules were written by HHS, it's virtually impossible for an issuer to give an employer a composite rate, and instead each employee gets an individual rate that varies based on their personal age.

The impact on small employer plans is startling.

Real World Examples Abound

Due to HIPAA privacy constraints, I cannot give all the details, but the following is a real life example from one of my employer groups. The employer is based in this region and has between 20-30 employees. Previously the employer contributed $200 a month to each employee towards their group health plan coverage. Last year the overall composite rate for the entire group for single employee coverage was approximately $310 a month, so the employer was paying about 2/3^{rds} of the coverage costs for all employees and the employees each would pay about 1/3rd. This rate reflected the costs of all of the employees on the plan, who range in age from their 20s to 50s.

Just this past month, I "shopped" for a group plan for this employer looking at ALL of the health plan options available in the state. The best scenario for fully-insured group coverage I could come up with had a rate of approximately $325 a month for the youngest employee and over $900 a month for the oldest. Naturally the employer was extremely distressed, and not just because of the increased costs.

The idea of explaining to the older employees on the plan just how much more they will have to pay is unsettling, and my client was truly afraid about potential legal costs should an employee file a complaint. My client considered dropping coverage altogether, but ultimately moved to a level funding arrangement which exempts his plan from both the age bands and the new health insurance premium tax, which in my industry we call the HIT. The scenario I just described isn't unique to my clients. It's going to happen to small business owners nationwide each month this year, with the bulk of them learning about this problem next fall.

If You Like New Your Plan…It is Less Flexible

Very small employers also face significant changes in plan choice options. President Obama famously campaigned on "if you like your health plan you can keep it." Millions of Americans with individual coverage found out that wasn't exactly true this past January 1. Many millions more small employers and their employees are going to find that out for themselves over the course of this year too, again with the bulk of them finding it out at some point this fall. Prices for many are increasing, but in addition, their plan options are going to change. The new law imposes a deductible cap of $2000/$4000 for small employers only, which will make it much harder for employers to offer their employees consumer-directed health plan options, since the cap cannot be offset with a HSA or an HRA and unfairly targets the small-business community. I want to make this point clear: the cap only applies to small groups; it has no peer requirement for individuals or companies like IBM.

H.R. 2995, a bipartisan bill to repeal this cap, has been introduced by Congressman Tom Reed, a Republican, and Mike Thompson, a Democrat. CAHC commissioned a study by Avalere that found enacting the bill would encourage more employers to retain coverage, thereby lowering premiums subsidy costs by $1.2 billion over ten years. My hope is that every member of this Committee will cosponsor the bill and that this Congress will take action to restore health plan choice options for small employers.

The law's new out-of-pocket limit cap is also problematic, since many small employers previously had high deductible plans that they offset with health reimbursement arrangements to shield employees from the costs, and those higher deductible plans are now not allowed. HHS has also implemented the out-of-pocket maximums in a way that conflicts with longstanding benefit practices and makes them very hard for carriers and employers to administer. The essential health benefit requirements are also changing the plan choices being made available to employers and often times just making them more confusing. The requirements related to covering pediatric vision and dental are complicated and inconsistent and barely understandable to seasoned benefit professionals and issuers. For the small employer just trying to run his or her company, they are mind-blowing!

Conclusion

I've given you some real life examples of how the law is impacting me and my clients, and the bottom line is: The new law has great potential to add cost and complication to the employee benefit plans very small employers offer too. Large employer concerns may command more of the media and regulatory

agencies attention, but I am here to tell you today that health reform's compliance and cost burden is causing a great deal of anxiety and disruption on the part of virtually all American employers, including self-employed guys like me. It is making employers large and small change their hiring practices, begin investigating ways to get out from the law's requirements, such as exploring other ways of providing coverage to their employees that the private market may offer, or consider dropping coverage altogether.

I've made my living helping people buy private health insurance coverage for more than 30 years, and I can tell you with absolute certainty that when prices go up and requirements get too complicated, both individual and business consumers buy less health insurance coverage or simply forgo it altogether. Since the financial impact of these new requirements will be much greater than the minimum penalty for those who choose not to buy health insurance, I am very worried that new costs and plan changes will tip people over the edge and they will decide to go bare. Given that the law's new guaranteed-issue requirements mean that people will be able to pop back into the coverage system without regard to any preexisting condition, there is a real concern that without the ease employer sponsored insurance offers, there will be an incentive for younger and healthier people who are working and may not qualify for subsidies to forgo purchasing insurance until they need medical care. In the insurance industry, that phenomenon is called adverse selection, and it will make the cost of health insurance even higher for everyone.

But I have highlighted the bipartisan solutions to some of these problems throughout my statement. My hope is that Republicans and Democrats can rally around these solutions because small businesses and the self-employed are facing real problems right now.

I truly appreciate the opportunity to provide my testimony to your committee today. I look forward to answering any questions you may have. Thank you.