



**National Association
for the Self-Employed**

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TESTIMONY OF CHARLIE ARNOLD

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ON BEHALF OF

THE NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED

BEFORE THE HOUSE SMALL BUSINESS COMMITTEE,

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

“OBAMACARE AND THE SELF-EMPLOYED: WHAT ABOUT US?”

MARCH 6, 2014

Chairman Hanna, Ranking Member Meng, and Members of the Subcommittee, thank you for the opportunity today to offer the self-employed's perspective on the Affordable Care Act (ACA) and to share with you its impact on those of us trying each and every day to keep our businesses afloat so that we can leave a lasting legacy for future generations.

My name is Charlie Arnold and I am the President and owner of Arnold Powerwash LLC, located in Lewes, Delaware. Arnold Powerwash is a family-owned, professional power washing company organized in commercial and residential divisions, cleaning all types of exterior surfaces, along with fleet washing and dry ice blasting divisions.

Like many self-employed, I wear various hats – from small business owner to community leader. In addition to owning and operating Arnold Powerwash, I am also proud to serve as the Pastor of Seaside Baptist Church and as the Emergency Medical Services (EMS) Captain for the Lewes Fire Department. Finally, it is in my role on the Member Council of the National Association for the Self-Employed (NASE) that I am offering today's testimony. The NASE is our nation's leading advocate and resource for America's 23 million self-employed and micro-business owners. It is in all of these roles that I am able to provide a unique perspective and first-hand experience regarding the impact the Affordable Care Act has had on the nearly 23 million self-employed Americans, the largest potential consumers of Obamacare.

At first glance, the impact of the ACA on my business appears to be limited. I currently have only two full-time employees and several seasonal employees defined as "leased" employees. Yet, I have found myself in a continued state of confusion to the status of my current health care coverage. As well as the

additional confusion caused by the restrictive actions taken by both the Departments of Treasury and Health and Human Services toward the rules governing Health Savings Accounts (HRAs), and the continuing disparity faced by the self-employed versus “big business”, namely the two reprieves given by the Obama Administration to larger businesses in the last year that grants them freedom from complying with the new law. However, the self-employed are left having the March 31, 2014 enrollment deadline looming over our heads, while we are forced to confront the potential for possible penalties for not enrolling in Obamacare.

Since October 1, 2013, the self-employed have been caught between a rock and hard place, trying to navigate the complex nature of the requirements under Obamacare and how it impacts us, our families, and our businesses. In fact, in a survey conducted by the NASE leading up to open enrollment in the Exchange Marketplace, 60% of respondents said they thought there was a "low" or "very low" chance they'd be able to secure both affordable and comprehensive coverage in 2014.¹

We can all acknowledge the launch of the Exchange Marketplace was fraught with confusion. The last minute cancellations of millions of health care plans was both unexpected and detrimental to many Americans – many who were assured their health policies would be carried over as “grandfathered” plans. This was especially challenging for the thousands, if not hundreds of thousands, of self-employed small business owners who had these types of plans and had not been previously planning on purchasing health care via the Exchange Marketplace.

¹ “Majority of Small Businesses Feel They Will Be Unable to Secure Comprehensive, Affordable Health Care in 2014” <http://www.nase.org/Research/NASESURVEYRESULTS/2013/11/21/new-survey-majority-of-small-businesses-feel-they-will-be-unable-to-secure-comprehensive-affordable-health-care-in-2014>

For example, an NASE member in Illinois had no intention of enrolling in a new health care plan via the Exchange Marketplace, because she had a grandfathered health care plan. As head of the household, her plan covered not just her and her husband, but also an adult child with severe disabilities. Eventually, after President Obama attempted to salvage the millions of plans that were cancelled, she decided to pursue her options via the Exchange Marketplace. But, this was proven to be a disaster for her and her family. Since their enrollment, she has experienced higher than anticipated costs, especially for prescription medication needed to care for her disabled son. In fact, several medications were not allowed under their new plan, and they have since had to jump through hoops to get approval for medication essential for their son's care.

I, myself, find the situation to be perplexing as I try to determine the best course of action for my business. For example, while I have two full-time employees, myself and my wife, I sometimes employ seasonal workers throughout the year to help me manage the workload during busy periods. This allows me to manage cash flow and overhead in order to keep my business afloat in lean times. These seasonal employees are "leased" through a professional employer organization. Late last year, the Department of Treasury released regulations suggesting that businesses who hire workers through temporary and employee leasing agencies may find themselves deemed to be co-employers with the agencies and, thus, are jointly and severally liable with the agencies for ACA penalties.² To say this was unexpected is an understatement. The bottom line is that this decision could single-handedly bankrupt my business. This is a prime example of how the agencies tasked with implementing the Affordable Care Act have manipulated the legislative intent of the law. Congress must act in order to ensure that

² <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>

small businesses, like mine, are able to utilize seasonal or “leased” employees, without facing additional costs, an unintended consequence of ACA compliance.

Another unintended consequence of the implementation of the Affordable Care Act is another interpretation by the Departments of Treasury, Health and Human Services, and Labor in regards to Health Reimbursement Arrangements “HRAs”. HRAs are both a popular and effective tool for the self-employed and micro-business community that allows for an employer to provide reimbursement to an employee for health related expenses. The employer must offer this arrangement to each employee at the same reimbursable rate, **which provides a unique and flexible way for micro-and small business owners to still access individual health care coverage, even when they are unable to afford group health care coverage.** However, in technical guidance issued in September 2013³, the Departments of Treasury, Health and Human Services, and Labor, determined that HRA plans could be offered by an employer **only if** they also provided a health care coverage that met the Essential Health Benefit requirements as set forth by the Affordable Care Act, regardless of company size. The NASE does not dispute that an HRA is not, nor should it be, a qualified health care plan. Nor are we advocating that offering an HRA should meet the employer mandate; however, that is not how HRAs were established or previously used by micro-or small businesses. HRAs were originally used to provide minor financial assistance to employees for the overall costs of health care, including but not limited to: out-of-pocket expenses, prescription costs, and co-pays; expenses that still exist even if an employee has purchased health insurance through the Exchange Marketplace in order to meet the individual mandate requirement. The NASE strongly objects to the guidance provided and requests that Congress seek to

³ <http://www.dol.gov/ebsa/newsroom/tr13-03.html>

clarify the intent of the law. In addition, we suggest allowing for the use of HRA plans by micro-and small businesses that fall under the employer mandate threshold as a tool to help provide financial assistance to their employees in covering health care expenses.

Finally, I would be remiss if I did not echo the calls by the NASE for parity between the “big business” community and America’s smallest businesses. The self-employed and micro-business community, representing nearly 76 percent of the entire small business community, continues to struggle in meeting the ACA’s compliance requirements while our corporate counterparts continue to get a pass from the Administration. Specifically, the NASE is calling for a one-year delay in the individual mandate penalty for one calendar year -- in fact, this week we anticipate that the House of Representatives will vote on H.R. 4118, *Suspending the Individual Mandate Penalty Law Equals Fairness Act*, introduced by Representative Lynn Jenkins (R-KS), which would delay the individual mandate penalty. I hope that this subcommittee, and the committee as a whole, will support the measure and provide much needed relief to those who are struggling to meet the requirements of the law. Additionally, due to the problems with the launch of the new health care system, we also urge the Administration and Congress to extend the open enrollment period until the end of 2014. This extension would allow adequate time for both individuals and small business owners to properly educate themselves about the best and most affordable health care plans available to meet their unique needs.

For the self-employed, the impact of the Affordable Care Act on us, our families, and our businesses has been enormous, but not all of those impacts have been negative. In fact, since the implementation of the Affordable Care Act, NASE members have been able to access comprehensive and affordable health care coverage in the Individual Marketplace, especially those who had previously faced barriers, such as

pre-existing conditions and/or age discrimination. However, those success stories are often buried under the significant challenges too many of us are continuing to have to face. Even the simple act of enrolling in the Exchange Marketplace has placed a hardship on many of us who have attempted to navigate a complicated and too often broken system laced with misinformation, inaccurate pricing and hidden costs. **Compliance is not made any easier by the continued unilateral action taken by the Administration to delay or interpret the law without input that leads to further confusion and mistrust in the system.**

It is a challenging time for America, but I believe that together we can help identify solutions to problems that lead to a strong country that offers fair and equitable access to comprehensive and affordable health care. Now is not the time to repeal and replace this new law, rather fix it so it works for all Americans.

I, on behalf of the National Association for the Self-Employed, thank you for the opportunity to offer the self-employed perspective on how the ACA has impacted our community.