

# **The Top 15 Reasons**

## **the “Affordable Health Care for America Act” (H.R. 3962)**

### **Increases Costs, Limits Choices and Kills Competition**

#### **1. Employer Mandate**

The bill includes an employer mandate that will require employers to offer healthcare to full-time and part-time employees. An employer mandate does not address the No. 1 issue facing small businesses: unsustainable costs.

#### **2. Payroll Tax Penalty**

Payroll taxes are an especially onerous tax because they tax labor. No matter how profitable or unprofitable a business might be, they are forced to pay this tax. The legislation requires that all employers with a payroll of \$500,000 or more pay a payroll tax of up to 8 percent if they do not provide “qualified” health insurance to their employees.

#### **3. Pay-or-Play, Pay-and-Pay and Offer-and-Pay**

The legislation establishes a confusing multi-part test that hits both employers who do and do not offer health insurance.

A **non-offering employer** will pay a payroll tax of either 2, 4, 6 or 8 percent.

**Offering Employers** must meet all of the following:

- A. Offer “qualified” individual and family coverage
- B. Meet premium contribution requirements of at least
  - a. 72.5% for individuals and
  - b. 65% for family plans
- C. Offer a “qualified” plan as defined by a government-appointed board

- ❖ If employees decline coverage from their employer, and are able to obtain coverage in the exchange, then the employer must pay a payroll tax penalty of up to 8 percent.
- ❖ If an employer (unknowingly) offers coverage other than the “qualified” plan, they can be assessed a penalty of up to \$500,000 a year (\$100 per employee per day).

#### **4. A “Minimum” Plan with a Big Price Tag and New Mandates**

Today, among businesses with less than 50 employees, 82 percent who offer coverage offer only one plan. H.R. 3962 gives a political board the power to define “coverage” and will determine whether an employer plan is “acceptable.” The bill does nothing to ensure that the new plans will be less costly than what small employers are paying today and even requires some small employers to cover benefits that are not currently mandated under federal law.

#### **5. Government-Run Public Option**

The public option outlined in H.R. 3962 fails to deliver what small employers have long sought – a reformed, private insurance marketplace that can provide businesses and employees with more affordable coverage and a sustainable choice of plans. Instead, the public option is an “easy way out” for legislators who decided to simply grow the size of government. NFIB is deeply concerned that a “public option” will further compromise the viability of private insurance and restrict choice to a single plan: the government-run plan, which will ultimately be funded on the backs of small businesses.



## **6. New Onerous Reporting Requirements**

H.R. 3962 places a new tax-compliance paperwork burden on all small businesses. Called “corporate reporting,” this expansion of the current information reporting requirements increases the cost of operating a small business and diverts resources away from growing the business and creating jobs. Tax paperwork is already the most expensive paperwork burden the federal government places on small business – costing small employers more than \$83 an hour. These new requirements will only add additional costs to already struggling small businesses.

## **7. The Surtax: A Tax on Job Creation**

Seventy-five (75) percent of small businesses are structured as pass through entities and pay their business taxes at the individual level. More than one-third of small businesses employing 20 to 250 employees would face the proposed surtax. When added to upcoming expected tax increases (like the expiration of the 2001 and 2003 tax cuts), the overall federal tax rate for these businesses will be 45 percent, which is 10 percent higher than the current corporate tax rate. Finally, since the tax is not indexed for inflation, the tax will affect more and more businesses each year.

## **8. Jeopardizes Existing Solutions for Small Business**

H.R. 3962 prohibits individuals from using HSA, MSA and HRA funds to purchase over-the-counter health products (except for insulin). This further limits the utility of this health insurance option, making it harder for people to “keep what they have.” The bill also limits contributions to FSAs and increases penalties on non-medical HSA withdrawals.

## **9. An Employer Tax Credit with Limited Value**

While some small businesses can be helped by tax credits, the structure of the credit is critical to its success. The small employer tax credit is limited to small businesses with 25 or fewer employees. To qualify for the credit the employer would be required to pay for 50 percent of their employees’ premium, the firm would have to have an average annual compensation per worker of \$20,000 or less to get the full subsidy, and the credit would phase out at \$40,000. U.S. Census data from 2007 notes that the average wage of full-time employees at businesses with fewer than 10 employees is more than \$30,000, meaning that in many cases the value of the credit is already cut in half.

## **10. Auto-Enroll Mandate**

The auto-enroll mandate requires employers offering healthcare to auto-enroll employees into that healthcare plan. This burden will mean that the employer must develop a new system to ensure that employees are either enrolled in the plan or are informed about how they may opt out. Unlike larger firms, small businesses are less likely to have an HR department to handle new mandates like this, meaning that resources would need to be diverted from the day-to-day operations of the business to comply with this requirement.

## **11. All Powerful Insurance Commissioner**

The unelected “Commissioner” will have unbridled authority to institute rules and regulations that greatly affect small employers, including the ability to define the terms: employer, employee, full-time and part-time employee. The commissioner will also be able to establish “counting rules.” These thresholds would be subject to continual changes, leaving small business owners in constant fear of ever-changing compliance requirements and more mandates.

## **12. You Can't "Keep What You Have..."**

Despite assurances from elected officials and pundits, H.R. 3962 sets forth a new standard for what qualifies as employer-based coverage and requires all employer plans to meet that standard within a 5-year period. While you may "keep what you have" now, you probably can't keep it forever.

## **13. Creates New and Expands Existing Government Programs**

H.R. 3962 provides multiple examples of new government programs and expansions of current programs. From increasing the Medicaid program to creating a new government pool for the pre-Medicare population to creating a government-run public option to establishing government-run boards to define "acceptable" health benefits, the massive growth squeezes out private options, increases costs and expands reliance on the government.

## **14. Small Employers Exposed to More Lawsuits**

Throughout the text of H.R. 3962 there are "rules of construction" that provide "green lights" for trial lawyers seeking to file lawsuits against small employers.

## **15. Studies that Paint a Grim Future For Small Employers**

A number of government studies are laid out in H.R. 3962, including: a study to "recommend that laws don't incentivize small and mid-size employers to self-insure" (p. 98), and a study allowing for recommendations to "improve and strengthen employer-based health plans sponsorship, employer responsibility...that would enhance the delivery of health care benefits between employers and employees" (p. 278). These studies are both costly and create a pathway for more government involvement in the workplace.