

**Testimony of Dave Bass
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before the

**Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
United States House of Representatives**

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“Health Care Challenges Facing North Carolina’s Workers and Job Creators”

Rowan-Cabarrus Community College
South Campus, Building 1000, Room 106
1531 Trinity Church Road
Concord, North Carolina

Chairman Roe and Congressman Hudson, my name is Dave Bass, and I am the Vice President of Compensation and Associate Wellness for Delhaize America Shared Services Group, LLC. Perhaps as important, I also am a resident of Concord, North Carolina. In my role, I work on behalf of the companies of Delhaize America, LLC, including Bottom Dollar Food, Food Lion, Hannaford, Harveys, Sweetbay Supermarket and Reid’s, to understand and apply health and wellness best practices as it pertains to our associates and our company. Thank you for the opportunity to appear here today to provide feedback on the implications of the *Patient Protection and Affordable Care Act* for Delhaize America’s business.

Delhaize America is a leading supermarket operator in the United States, with over 105,000 associates working in 18 states throughout our network of 1,553 store locations, 10 distribution centers and four corporate support centers. Despite the economic climate during the Great Recession and the narrow one percent profit margins traditionally associated with the grocery industry, in recent years our company has expanded into new markets and grown its Bottom Dollar Food banner in New Jersey, Ohio and Pennsylvania.

In North Carolina, Delhaize America employs over 30,000 associates and operates more than 500 store locations. As you may know, Food Lion was founded in Salisbury, NC in 1957, and we are proud of our long history in this great State. In all of our operating states, our company is dedicated to supporting programs and organizations that make a difference in the lives of our shoppers and neighbors. Last year alone, Delhaize America companies donated over 41 million pounds of food. Through corporate and foundation giving, local programs and individual associate involvement, millions of dollars and countless volunteer hours are devoted to helping our communities and our associates grow and prosper.

Delhaize America’s vision is to, “Enrich the lives of our customers, associates, and communities we serve in a sustainable way.” Along with a culture of respect, Delhaize believes a primary way

of supporting our associates in a sustainable way is through the provision of benefits to a large number of our associates. To meet the needs of our associates and support their overall health and wellness, Delhaize America provides comprehensive health care coverage, one of the most expensive benefit options, for its associates. Delhaize is proud to offer all our full-time associates the opportunity to enroll in healthcare – and has done so for many, many years.

Challenges Facing Delhaize America and its Associates under the Affordable Care Act

The Patient Protection and Affordable Care Act creates complex challenges for food retailers seeking to provide health care coverage to associates while maintaining a viable business in an exceedingly competitive consumer environment. Food retailers and their associates operate under fluctuating and unpredictable work schedules in order to meet varying consumer demand. Health coverage and compliance costs must remain affordable to Delhaize America in order for the company to maintain employee benefits and provide competitive consumer prices.

Under the *Patient Protection and Affordable Care Act*, beginning in 2014, “large employers” (which the law defines as companies with 50 or more full-time “equivalents”) must offer coverage to full-time employees (which the law defines as averaging 30 hours/week) and that employer-offered coverage must be “affordable” (defined as not costing the employee more than 9.5% of his/her household income) and provide a “minimum value” of at least 60% of the average benefit costs covered or face a tax penalty. While on the surface this may seem straightforward, there are many complications that could impact the health coverage that Delhaize provides.

As we look ahead to the implementation of the primary provisions of the *Patient Protection and Affordable Care Act*, our company foresees a number of challenges, and I would like to draw your attention to a few key issues for our business including: the definition of a full-time employee, affordability criteria, mandatory auto-enrollment, the temporary reinsurance fee and Flexible Spending Account purchases.

The Definition of a Full-Time Employee

Under the *Patient Protection and Affordable Care Act* (ACA; PL 111-148), as a large employer Delhaize America must offer coverage to full-time employees who average 30 hours per week beginning in 2014. The companies of Delhaize America employ a significant number of both full and part-time associates. Currently, 45 percent of our associates are in full time hourly and salaried roles. Both full and part-time associates who meet eligibility criteria are able to receive coverage under our medical plan. Full-time hourly, salaried and part-time salaried associates working at least an average of 35 hours per week are eligible for coverage after two months of continuous employment.

The revised definition of a full-time employee under the *Affordable Care Act* could result in the reclassification of many of Delhaize America’s associates from part-time to full-time. Such a change may impact store managers’ ability to provide for flexible scheduling, and associates’ hours could be impacted as a result. The definition of a full-time employee under the Act also may cause confusion among associates as they seek to understand which benefits they are eligible to receive should the individual only be considered full-time for the purposes of medical coverage.

Affordability Criteria

Another complicating factor is that when coverage is offered to our associates, the premium must not cost the associate more than 9.5% of his/her household income and also must cover at least 60% of the average benefit costs. Again, while that may sound simple, it is challenging to analyze associate wages even under the current safe harbor provisions that allow employers to use an employee's W-2 wages to verify affordability.

Complicating matters, as I am seeking to define Delhaize America's health plan and determine associate rates for 2014, the uncertainty created by the federal government's delay in rule finalization affects my ability to understand how best to craft and comply with the *Affordable Care Act* as I look to finalize our company's plan for next year.

Mandatory Auto-Enrollment

Delhaize America also is concerned about the *Affordable Care Act's* mandatory, auto-enrollment provision. Open enrollment for Delhaize America's medical plan is held annually in October and November to give associates an opportunity to select coverage options for the next plan year. Associates with existing coverage under the company's medical plan that do not actively engage in the enrollment process for benefits have their benefits rolled over to their existing selections. Allowing for the automatic enrollment of associates who have previously chosen to receive coverage saves associates time and ensures continued coverage.

Whereas, the *Affordable Care Act's* mandatory associate enrollment provision under Section 1511 could inadvertently cost associates' wages and create duplicative coverage if a parent or spouse already covers the associate. When associates who do not want employer coverage fail to opt-out of the auto-enrollment process, the employer is required to deduct a premium from the associates' paycheck. Delhaize America supports Congressman Hudson's introduction of the *Auto Enroll Repeal Act* (H.R. 1254) that would repeal the *Affordable Care Act's* mandatory enrollment provision, helping to ensure that associates take an active role in coverage determinations.

Temporary Reinsurance Fee

On top of all the compliance costs associated with offering health coverage under these rules is a "Temporary" Reinsurance fee for employers offering self-insured plans that will charge our company \$5.25 per month per capita in benefit year 2014 (\$63 per capita for all of 2014) and onward.

Flexible Spending Account Purchases

Additionally, under a little known provision of the *Affordable Care Act*, Flexible Spending Account (FSA) and Healthcare Reimbursement Account (HRA) funds may no longer be used to buy over-the-counter (OTC) medicines unless they are prescribed by a doctor. This prohibition restricts individuals' access to OTC medications by requiring an unnecessary and more costly visit to the doctor's office for an OTC prescription while also putting our store locations without pharmacies at risk of losing FSA shoppers. It was just five years ago, in 2008, when Food Lion

retrofitted its registers to comply with Internal Revenue Service regulations to accept customers' FSA/HRA cards for approved healthcare and pharmacy items.

Many of our customers rely on over-the-counter medicines to manage existing conditions, and Delhaize America supports legislation that would reinstate FSA/HRA purchases of over-the-counter medicines without a prescription. In the 112th Congress, the *Restoring Access to Medication Act* (H.R. 2529) was introduced to restore this valuable benefit, and we would encourage the committee to evaluate options for the introduction of similar legislation in the 113th Congress.

Conclusion

Since the *Affordable Care Act* became law, I have been focused on trying to understand all of the applicable rules so we can determine how our companies' health plans fit into this structure. I understand that the Administration has attempted to provide some flexibility to employers, but many of these rules were only recently released and many rules are still pending. As a human resources professional, I cannot afford to build a health plan based on so many uncertainties, particularly given the complexities of these rules. Unfortunately, there is no one place or handbook that is available for me to figure out all of the rules and ensure that our plan is in place and our employees understand their options – as the need to finalize my plan design quickly bears down on me.

As an employer and retailer who is trying to do the right thing by continuing to offer coverage to our full-time employees, I'm concerned that even if I were to have the perfect playbook to try to make sure I have all of my FTEs identified and I have offered the "right" coverage, my company may still get penalized because one of our employees is mistakenly awarded an ACA tax credit. I'm either going to be in a position of demonstrating that we did offer affordable coverage and have that person—that associate—penalized or Delhaize America is going to get penalized.

Any steps that can be taken by the Committee to mitigate the burdens employers are facing is greatly appreciated. Specifically, we need Congress's help in addressing some of these burdens that puts at risk our company's ability to offer health coverage that is affordable and of value to as many of our employees as possible. First, we need Congress to amend the ACA's full-time employee definition to be in line with current workforce standards. Second, employers need a "transition" or "good faith" period through 2014 to figure out all of these rules, test how our eligibility measurements and health plans perform without fear of being penalized - and our associates to similarly understand what is available to them. And as a retailer, we need Congress to restore the use of Flexible Spending Account debit card purchases without a prescription. By no means are these suggested reforms "cure-alls," but the changes would potentially alleviate some of the burdens to our business.

Delhaize America is grateful for the opportunity to appear before you today. We welcome the opportunity to work with you in your efforts to address and clarify provisions within the *Affordable Care Act*.

Representative Roe and Representative Hudson, thank you for your time.