Statement of the
Retailers Association of Massachusetts
on behalf of
National Retail Federation

submitted to the

U.S. House of Representatives Committee on Education and the Workforce

for its hearing on

"Legislative Proposals to Improve Health Care Coverage and Provide Lower Costs for Families"

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Chairwoman Foxx, Ranking Member Scott and honored members of the Committee, I thank you for the opportunity to appear before you today to offer comments regarding the various legislative proposals currently before the Committee to improve health care coverage for small businesses. My name is Jon Hurst and I am the president of the Retailers Association of Massachusetts (RAM) and a member of the National Retail Federation (NRF).

Established in 1918, RAM is a statewide trade association of approximately 4,000 member companies. Our membership ranges from independent, "mom and pop" owned stores to larger, national chains operating in the general retail, restaurant and service sectors of the retail industry. The retail industry in the Commonwealth of Massachusetts is the backbone of our local Main Streets, supporting over 928,000 jobs and operating in more than 73,000 brick-and-mortar establishments.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing $2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

As a leading employer organization advocating for equitable and affordable health insurance coverage for small businesses, RAM would like to voice its support for the Small Business Health Fairness Act (H.R. 1101) as the legislation would allow small businesses to join together through association health plans to provide greater access to affordable health care for their employees. In doing so, this legislation would offer small businesses access to the same cost savings available to larger employers under the ERISA Act. Trade associations, professional societies, and local chambers of commerce and in particular state retail associations can offer a vital bridge to such affordable coverage for their small employer members and their employees.

Group health benefits are the key to coverage for more than 170 million Americans. But, not all groups are created equally. NRF has long noted the discrepancy between larger and smaller companies and has supported past iterations of the Johnson-Walberg bill H.R. 1101 to help provide smaller companies better and more affordable access to health benefits. NRF continues that support today and endorses H.R. 1101.

Group health coverage balances the risk of health care utilization between younger and older employees, healthy or less so. Employment-based group coverage can be distinguished from public pools because employees come to the business to work rather than to seek coverage, as opposed to a public pool where the sole objective is to obtain coverage. The difference in presentation of risk, though subtle, is important. Private, employment-based group plans work better and provide more affordable coverage.

Smaller employers have fewer employees to balance their employees' various risk profiles. Strategies taken by the Affordable Care Act – the SHOP plans and the rather byzantine small business tax credit – have not helped smaller employees. Steps must be taken to better support these smaller businesses in providing coverage.

Association Health Plans are an important answer in our view. Not only do they offer the potential to band with additional small employers in their local state through bona fide trade or professional associations, but it also offers potential to band together with other employer groups in other states utilizing the federal ERISA law to maintain common benefits across state lines.

Under the Affordable Care Act (ACA) our nation's small businesses and their employees have been relegated to a second class consumer status versus their large, self-insured, ERISA exempt competitors when it comes to access and affordability of health insurance coverage. Allowed to group rate, such large employers avoid the costs associated with unfair levels of cross subsidization experienced in the individual and small group markets. They are also able to avoid the costs of provider pushed, costly state mandates which most consumers don't want, will never use, and can't afford. Avoidance of these costs provides significant savings for these employers and places their small competitors at a competitive disadvantage. The ACA, in mandating the purchase of health insurance coverage yet failing to provide consumers equitable treatment under the law in terms of access and pricing is not only unfair it is discriminatory.

As called for in the proposal before you today, the solution to this problem is to provide small businesses more flexibility under the ACA to look outside the traditional markets available to them to secure their coverage. This includes providing small businesses, either through industry or professional organizations or on their own, the ability to band together to self-insure and be group rated or in the alternative band together and purchase fully insured products outside the community rated small group and individual markets. Such changes would not only level the playing field for small businesses, but as experienced in Massachusetts under our group purchasing cooperative program, leveraging existing relationships with industry organizations provides small businesses with additional benefits beyond simply securing health insurance coverage.

The adoption of the cooperative model in Massachusetts is indicative of our leaders' bi-partisan support of the concepts underlying the legislation currently before the Committee. And in a recent letter to House Majority Leader Kevin McCarthy, Massachusetts Governor Charles Baker reiterated that support when he called on Congress to amend the ACA to "permit insurance products offered through group purchasing cooperatives and professional employer organizations."[1] Today, I echo this request for flexibility for our nation's small businesses and urge your support the Small Business Health Fairness Act.

Introduction to Universal Healthcare in Massachusetts

Eleven years ago, the Massachusetts General Court adopted Chapter 58 of the Acts of 2006[2], (often referred to as "RomneyCare") mandating universal coverage for Massachusetts residents. While successful in moving Massachusetts towards universal coverage, the law failed to rein in the ever growing cost of coverage and created a system where a subset of consumers—small businesses—were relegated to second class status under the law. As a result, affordability became a significant issue for Massachusetts small businesses, as did their inability to take advantage of essential cost saving tools due to the nature of the state's merged individual and small business risk pool.

Chapter 58 also failed to recognize how small businesses make their employee purchasing decisions, and the important relationship industry and professional organizations play in the ability

[1] Governor Charles D. Baker to The Honorable Kevin McCarthy, January 11, 2017, http://www.bostonglobe.com/metro/2017/01/12/read-letter-governor-baker-sent-congress/h9m7B1HrkewyRjxNiNgJnK/story.html?p1=Article_Related_Box_Article

[2] https://malegislature.gov/Laws/SessionLaws/Acts/2006/Chapter58

of small businesses to adequately assess and access health insurance options. Rather than leverage these relationships and allow these trusted advisors to serve as access points to the health insurance marketplace, the law relied on government run exchanges to offer small businesses options they did not want.

Recognizing these issues, Massachusetts began work on a second set of health care reforms focusing on cost containment, which would eventually pass into law in August of 2010 as Chapter 288 of the Acts of 2010[3]. By that time, the Affordable Care Act (ACA), which borrows heavily from the Massachusetts model had already been passed into law at the federal level. In doing so the ACA not only replicated the affordability issues experienced in Massachusetts under Chapter 58, but it also preempted important provisions of Chapter 288 intended to address the problem. As a result our small businesses continue to experience year over year premium increases well in excess of their large competitors and government insureds.

Merged Market and State Mandates under Chapter 58

As part of Chapter 58, Massachusetts merged its non-group (individuals) and small group (employers with less than 50 employees) insurance markets into one guaranteed issue "merged" market and prohibited insurers from basing merged market rates on any individual's or group's past or projected health claim experience. The rates in the merged market are therefore community rated based on the claims experience of the entire merged market pool.

By nature, the community rating structure utilized in the merged market results in significant cross subsidization of individuals by small groups within the merged market. Furthermore, by prohibiting the use of an individual's or employer's past or projected health claim experience, community rating also effectively prevents feasible utilization of cost containment tools typically available to larger groups purchasing coverage outside the merged market. In short, an insured's effort to reduce one's risk and claims cannot be translated into direct premium savings by merged market consumers.

Merged market consumers also incur the increased costs associated with covering state-adopted mandated benefits. However, these costly mandates may be completely avoided by larger self-insured groups which make up 60% of commercial marketplace in Massachusetts. Since the adoption of Chapter 58 in 2006, 19 new mandates and/or assessments have been passed in Massachusetts – an average of three per year. A 2013 report by the Massachusetts Division of Insurance (DOI)[4], required by 211 CMR 149.00, found that 12 state mandated benefits fully insured plans are required to cover are NOT covered at all by more than 90% of the self-insured plans in the Commonwealth.

As a result of community rating and unavoidable mandated benefits, from 2006 to 2010, RAM small group members experienced a cumulative average premium increase of 73%, or about 15% per year, with no ability to effect positive change in their premiums. Large employers and even the Commonwealth itself saw annual increases of only about a third of that amount each and every

[3] https://malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter288

[4] Massachusetts Division of Insurance, "Annual Report of Self-Insured Accounts as of December 2013- membership Data," December 2013, http://www.mass.gov/ocabr/docs/doi/companies/tpa-financial-2013.pdf

year. Chapter 58 essentially relegated small businesses in Massachusetts and their employees to second class consumer status compared to their larger competitors.

Cost Containment Reform

In an effort to level the playing field for small employers and provide them more flexibility to access coverage through industry organizations, the Massachusetts General Court, in a bi-partisan effort, responded with the passage of Chapter 288 of the Acts of 2010. Among other changes, the legislation established small business group purchasing cooperatives designed to give merged market consumers the ability to negotiate with providers and carriers, create new plan options and choices and enable such consumers to realize true financial incentives for implementing wellness and consumer educational programs.

The law authorized the creation of six small business group purchasing cooperatives. Cooperative applicants are limited to nonprofit or not-for-profit corporations or associations organized in Massachusetts (i.e. industry trade associations, chambers of commerce, professional societies). Applicants must have been organized for purposes other than securing health insurance for their members.

Unlike the ACA's Consumer Operated and Oriented Plans (CO-OPs) which were designed to compete with the commercial market, the Massachusetts cooperatives are designed to exist as part of the commercial insurance market. The law requires all plans offered through the cooperatives to be fully-insured and based on products available in the merged market by the issuing carrier. Rates offered by the issuing carrier through the cooperatives must be based on the rates available in the merged market outside the cooperatives but may differ based on the relative difference in the projected experience of the cooperative members versus the projected experience of insureds enrolled in merge market products outside the cooperative. This is commonly referred to as the cooperative adjustment factor or cooperative rating factor. The amount of the cooperative factor is determined through negotiation between the cooperative and the contracting insurance carrier within certain limitations and subject to DOI approval.

In order to ensure positive claims experience within the cooperative population and thus positively impact future carrier negotiations, the law also required all cooperatives to provide members access to a sponsored wellness program. Each cooperative must maintain a wellness participation rate of 33% of covered subscribers. The goal is to reduce claims and ensure proper utilization through transparency tools and creation of a healthier, more educated healthcare consumer. The resulting reduction in costs to the insurer may then be reflected in premium discounts derived from the cooperative rating factor.

The law designates the DOI as the regulatory agency responsible for the oversight of the cooperative program. The regulatory framework promulgated by the DOI (211 CMR 151: Certified Group Purchasing Cooperatives[5]) includes a comprehensive approval and renewal process as well as stringent reporting requirements designed to ensure protection of the consumer and compliance with the law. Approved cooperatives are required to file for annual renewal with the Division of Insurance.

[5] http://www.mass.gov/courts/docs/lawlib/210-219cmr/211cmr151.pdf

Massachusetts Cooperatives Experience

To date, five organizations, starting with RAM in January of 2012, have been approved by the DOI to operate as certified group purchasing cooperatives. Of the five, RAM, the Massachusetts Association of Chamber of Commerce Executives (MACCE) and the Spring Healthcare Cooperative, are currently operating in the marketplace. The Associated Subcontractors of Massachusetts and the Massachusetts Society of Certified Public Accountants have both been certified as group purchasing cooperatives but have ceased operation due to limitations imposed by the ACA. Both groups have indicated an interest in continuing operation should changes in the ACA make it feasible again.

Initially, the approved cooperatives had been able to offer members between a 3% and 5% discount on their premiums by demonstrating their commitment to creating a healthier, more educated population of health care consumers through adoption of wellness participation requirements beyond what is required by the law. The model began working as designed until implementation of the ACA removed the state's ability to utilize certain rating factors including the cooperative factor.

Impact of the ACA

The cooperative concept followed six years of experience under a mandated universal health insurance law in Massachusetts. An innovative approach, strongly supported by our elected and regulatory officials, cooperatives should have served as a model cost containment measure for small group markets throughout the rest of the country under the ACA. Instead, rigid market rating rules adopted as part of the ACA implementation essentially prohibited the continued operation of the Massachusetts cooperative model as it was originally designed.

In November of 2012 the federal Centers for Medicare and Medicaid Services (CMS) published regulation CMS-9972-P: Health Insurance Market Rules[6] as part of the implementation of the ACA. A key provision in the regulation required that state regulators limit rate variation within the individual and small group markets to four listed rating factors: (1) whether the plan covered an individual or family, (2) the insured's geographical rating area, (3) age, and (4) tobacco use. In doing so the regulation prohibited Massachusetts from using the cooperative rating factor to provide discounts under Chapter 288.

These changes to the state's rating factors were originally scheduled to take effect on January 1, 2014. However, through a series of waivers the Department of Health & Human Services (HHS) granted Massachusetts a transition period for the elimination of state rating factors (industry, use of intermediary, participation rate, size, and cooperative) which would otherwise be disallowed under the ACA. Under the transition period Massachusetts may utilize certain rating factors at a diminished value until policy year 2018.

RAM Cooperative

[6] https://www.gpo.gov/fdsys/pkg/FR-2012-11-26/pdf/2012-28428.pdf

RAM was the leading employer organization advocating for the passage of small business group purchasing cooperatives, and was the first certified to operate as a cooperative in January of 2012. For the past four years the Retailers Association of Massachusetts Health Insurance Cooperative (RAMHIC), has worked to create a market based solution to disproportionate premiums for small businesses versus their larger competition. In addition to offering discounted premium rates RAMHIC has sought innovative approaches to delivering comparable coverage for comparable premiums using tools ranging from low administrative costs, to taking proactive initiatives designed to make members healthier and more educated consumers of health care services.

Through the cooperative model, RAM has not only been able to directly impact the cost of coverage through discounts to members but have also provided members additional value to their basic health care coverage through the offer of ancillary benefits such as hospital care plans, dental plans and negotiating with carriers to secure wellness programs that provide financial incentives at the business and employee level.

As required by law, RAMHIC is a fully insured program offering plans based on small group market products from two contracting insurance carriers—Fallon Health (FH) and Blue Cross Blue Shield of Massachusetts (BCBSMA). Offerings include limited network, HMO and PPO plan options which may be coupled with varying deductibles, flexible spending accounts and health reimbursement arrangements to allow the consumer to design and choose a plan that fits the needs of their business and those of their employees. Both carriers allow businesses to offer their employees choice by selecting multiple plan designs to offer to their employees who then may choose their desired plan.

RAMHIC currently utilizes the wellness programs offered through our carrier partners as part of their health plans. Both programs provide financial incentives to subscribers for participating in the program. The BCBSMA program also provides small businesses a year end rebate based on the percentage of their employees that participate in the program. Through continuous marketing and educational efforts, RAMHIC has consistently exceeded the statutorily required 33% wellness participation. Despite this success, the resulting positive impact on the population's claims experience and utilization may not be translated into additional savings due to the ACA's limitation on the cooperative factor.

Despite limitations caused by the ACA, RAMHIC has experienced consistent overall year to year growth. As of December 2016 the cooperative services 287 member businesses for a total of 5,121 lives. This exceeds the number of small group lives covered by the Massachusetts Health Connector and comes at no cost to the tax payer and with no discrimination on coverage.

Analysis of the cooperative's experience indicates that the group is outperforming similarly sized large groups in terms of overall claims experience and is below several small group benchmarks. Prior to implementation of the ACA, similar analysis had resulted in both carriers requesting an increase in the cooperative rating factor applied to RAMHIC. The terms of the federal waiver prevented the Commonwealth from considering such requests.

In an effort to explore all options for providing members the most affordable coverage available, RAM has also considered a number of alternatives to traditional commercial insurance including

transitioning the group into a Multiple Employer Welfare Arrangement, creating a stand-alone captive, and joining an existing captive. None of these options have been determined feasible at this time.

RAM continues to advocate at the state and federal level for a Massachusetts waiver from some of the more onerous and costly provisions of the ACA, including the limitation of state small group rating factors designed to seek fair rates and to incent job growth. At the same time RAM continues to seek Congressional changes to the ACA which will return small group rate setting flexibility to the states, as well as federally authorized solutions such as association health plans for small employers across the country. Providing high quality health insurance coverage for small employers and their employees at rates comparable to those experienced by large self-insured groups should be a primary objective for us all.

Conclusion

The parallels between the experience in Massachusetts under Chapter 58, and now across the country under the ACA are very clear. Individuals were helped, insurance coverage was expanded, and large self-insured employers were not particularly harmed financially. Yet small businesses and their employees saw government imposed discrimination in their choices, their tools, and their costs. Small businesses compete every day with large employers for both customers and employees. And whether required by law to buy health insurance or not, employees of small businesses deserve the same marketplace rights to obtain comparable coverage at comparable rates as those that work for big business and big government.

RAM and NRF appreciate the opportunity to appear before you today and for your consideration of these comments. We urge this Committee and Congress to support the Small Business Health Fairness Act and its underlying intent of eliminating discrimination and seeking equality for small businesses and their employees.

We look forward to working with you on an ongoing basis to identify solutions to the significant problems facing small businesses and stand ready to help this Committee and Congress on the vital issue of fair and affordable health care and health insurance.