TESTIMONY OF SHELLY SUN
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BEFORE THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT

"Tax-Related Provisions in the President's Health Care Law"

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Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee, thank you for the opportunity to testify before you today on the tax-related provisions of the President's health care law. My name is Shelly Sun, and I am the co-founder and CEO of BrightStar Franchising LLC and a member of the Board of Directors of the International Franchise Association. BrightStar is a franchised system of 255 medical and non-medical agencies providing homecare services and staffing. Over 160 franchise owners serve 10,000 families in 38 states and employ 15,000 nurses and caregivers. As a whole, the franchise industry supports nearly 18 million jobs across 300 business lines, and contributes $2.1 trillion in output to the U.S. economy. I appear here today on behalf of BrightStar as well as the International Franchise Association, the world's oldest and largest organization representing franchising.

The Affordable Care Act's (ACA) employer mandate will have a devastating impact on the economy, will increase unemployment and will exacerbate underemployment. The law will also negatively impact my company, both as a rapidly-growing system of franchise small business employers and as a franchisor with 60 of my own employees due to the increased costs from the Affordable Care Act. The Act is the greatest threat to the development of my business and that of my 160 franchise owners, in addition to the 825,000 franchise establishments nationwide.

The Employer Mandate

When the U.S. Supreme Court upheld the Affordable Care Act last June, the law was finally exposed for what it truly is: a tax increase. The employer mandate presents a massive challenge for small business owners everywhere who are struggling in a still fragile economic recovery. According to a study by the nonpartisan Hudson Institute, the employer mandate puts 3.2 million full-time jobs at risk in the franchise industry alone, and will add more than $6.4 billion in increased costs to franchise businesses, not including the cost of regulatory compliance.

The tax increases and added costs aside, the law is a disincentive for franchise owners to expand and add new jobs. Employers with at least 50 "full-time equivalent" employees are subject to tax penalties under the employer mandate if they do not provide qualifying health care coverage to their employees. Fifty-five of the 160 BrightStar franchise owners are considered "large employers" under the ACA; the rest are on pace to grow to that level in the next two to five years, but are faced with a significant challenge to their business models once they hit the 50 "full-time equivalent" employee mark. Thus, our firms find themselves in a "Catch-22." They want to expand, but if they do, they get hit with significant new heath care and compliance costs, which can only retard growth. In this context, it is incredibly challenging that an employer with 50 full time employees is in the same category as an employer with thousands of employees.

The current definition of full-time employee provides a disincentive for business owners to hire and provide full-time jobs. If owners maintain their current scheduling levels of all employees, the average added cost for a BrightStar unit with greater than 50 full time employees if all eligible employees enrolled for coverage would be $127,000, equal to six percent of the average annual unit revenue. If owners instead choose to pay tax penalties, they will pay as little as $6,000 and up to $140,000 due to the elimination of the first 30 employees in the calculation of the penalty. With the goal of increasing access to healthcare, there needs to be more incentive for the small business owner to choose to offer healthcare coverage rather than choose to pay the tax penalties to the government. If the definition of full-time employee were raised from 30 to over 36 hours per week, the added cost of providing coverage will fall by 30 percent.

As a result of the employer mandate, health insurance premiums will rise just by virtue of who will enroll in employer-sponsored plans. Many lower-wage caregivers in the homecare industry will choose not to enroll in employer-sponsored plans because they are too expensive, even if they meet the law's so-called "affordability standard." The remaining employees who do choose to enroll in the coverage will likely see more value in the plan because they require the most health care services. Thus, the plans will be overloaded with less healthy employees, while more healthy associates will opt out, causing plan premiums to spiral out of control. This is a classic case of adverse selection, and the increased costs will be borne by the employer in future years as insurers increase our premiums.

Despite employers' best efforts and intentions to offer coverage to workers, the result of the employer mandate is that both employers and employees lose. Take, for example, a real BrightStar employee that I will refer to as "Sarah Johnson." Currently, Sarah works an average of 36.5 hours per week. Her employer, a multi-unit BrightStar franchisee, is considered a "large employer" under the ACA, and has decided to reduce the impact of the employer mandate on his business by managing some variable-hour employees to stay under the 30-hour threshold. As a result, Sarah's hours will be reduced to 28 hours per week or less, which will reduce her annual wages by at least $5,400. If you combine wages lost with the cost of Sarah's individual mandate to purchase health insurance which has an annual premium of over $3,500, the total financial impact on Sarah is nearly $9,000 annually.

Sarah will not receive insurance coverage through her employer, but she will also be less able to afford her own coverage through the state insurance exchange. As much as small business owners and job creators are negatively impacted by the employer mandate, the ones who really suffer are the workers themselves.

The Health Insurance Tax (HIT)

A second tax in the Affordable Care Act that will drive up insurance premiums for small business owners is the excise tax on health insurance companies in order to offset the costs of subsidized coverage through state exchanges. The tax amounts to billions of dollars each year on the health insurance industry, and this cost will be passed directly to consumers in the fully-insured marketplace in the form of higher premiums. These taxes are estimated to reach $87 billion dollars between 2014 and 2019, adding to the crushing burden of health insurance premiums that employers already bear.

The tax is higher for health insurance companies with larger market shares, meaning the plans from the nation's most trusted and reputable insurers will become less affordable for small business owners and their employees. Small business owners do not have a large enough pool to self-insure, and are therefore faced with either paying higher premiums in a fully-insured small-group plan or paying the $2,000 per employee tax penalty under the employer mandate for failing to offer coverage. Employers that already offer coverage to employees will pay higher premiums for their existing plans as a result of these excise taxes.

In addition to the excise taxes on health insurance companies, the collective weight of other tax and regulatory provisions in the ACA contribute significantly to rising health insurance premiums. The Patient-Centered Outcomes Research Institute (PCORI) and transitional re-insurance fees are applied on a per-capita basis and will cost up to tens of billions of dollars. Reporting requirements from the U.S. Departments of the Treasury, Labor, and Health and Human Services require additional employees and added costs for retaining counsel and consultants. We have calculated that for a single BrightStar unit, the cost of compliance is at least $8,000 for back-office administration and professional services. In a stagnant economy, with rising prices and shrinking profit margins, this cost increase could have been used instead to create part of a job rather than a non-value added government compliance cost. We should be looking for ways to reduce costs for businesses and create incentives for businesses to create jobs.   In the healthcare industry, employees want the flexibility of working a variable schedule and keeping track of "full time equivalents" creates an overwhelming burden for our franchisees.

Conclusion

Small businesses are the backbone of the American economy, and Congress and the Administration must find better solutions that allow small businesses to implement the Affordable Care Act efficiently. Specifically, we would ask for two simple changes that would relieve part of the burden of the employer mandate while providing small business owners with the certainty they need.

First, define a "large employer" as one with at least 50 full-time employees instead of "full-time equivalents." Simplifying this definition will provide small businesses with more certainty about their status, allowing them to better control costs and make long-term business plans for future growth.

The second request is to change the definition of "full-time employee" to more closely align with the current standard of 40 hours per week. This is the number that American businesses have managed their hourly employees to for decades, and setting the definition as 30 hours per week simply forces employers to manage their workers to fewer hours.

The unintended impact of the employer mandate is devastating: fewer workers will receive health insurance, and they will be less able to afford their own coverage. Franchise small business owners are faced with a choice between either paying higher premiums or paying tax penalties for not offering coverage, and neither option is a good option.

The Affordable Care Act is anything but affordable. It <u>adds taxes, costs, and fees, while threatening the economic viability and job creation opportunities for many of our nation's small businesses</u>.

For our franchise business owners, something has got to give. We urge you to address these fundamental challenges and allow America's small business owners to realize their true potential. If you take the initiative, millions of franchise owners and employees – and certainly the BrightStar organization – will stand with you.

Thank you for the opportunity to testify before you today, and I look forward to answering any questions you may have.