

# Labor Campaign for SINGLE PAYER HEALTHCARE

## TURNING CHEVYS INTO CADILLACS: THE ACA EXCISE TAX AND THE FUTURE OF HEALTHCARE BARGAINING A LCSP BRIEFING PAPER

### What is the Excise Tax?

- ▶ Effective 2018
- ▶ 40% tax on all annual health plan costs over \$10,200 individual/\$27,500 family
- ▶ [Limited adjustments](#) for “high risk” occupations, age/gender/geographic disparities
- ▶ Thresholds will increase annually at the CPI inflation rate (plus an additional 1% per year for the first 3 years)
- ▶ Tax is triggered by entire cost of plan including Health Saving Account (HSA) and Flexible Spending Account (FSA) contributions but excluding “stand alone dental and vision plans”, long-term care plans, and non-healthcare related benefits like life insurance and disability. Cost amounts will generally be calculated in a fashion similar to how employers calculate COBRA contributions.
- ▶ There is a limited exception for multiemployer plans (“Taft Hartley” plans) which will be able to use the family limit as their per member cost.
- ▶ “Coverage provider” is responsible for paying the tax—leading to complex calculations of liability in health plans with multiple providers and levels of coverage. In reality, all costs are expected to be paid by the employer and passed on to the employees.
- ▶ Unlike health benefit costs, employer payments of the excise tax are not tax deductible. For private employers, this could increase the effective tax rate from an already onerous 40% to 60%.

### Why do they call it a “Cadillac Tax”?

**1** The term “Cadillac” denotes special privileges and unnecessary luxury. It implies that certain workers receive benefits which are unearned and at the expense of everyone else and that the elimination of these benefits won’t really hurt anyone. Ever since the “welfare Cadillac” slanders of the Reagan era, the term also has unfortunate racial connotations. The implication is that this tax will only affect a bunch of spoiled parasites that had it coming to them.

**2** In reality, the tax will fall heaviest on decent, bread and butter benefits that provide basic security for working class families. It should more aptly be called a “Chevy Tax” because everyone should have one.

## What is its impact?

Because the thresholds increase at the rate of inflation and healthcare costs [almost always increases](#) at rates 2 and 3 times the CPI (medical inflation has been lower than the overall CPI in only one year of the last 50), sooner or later every employment-based plan will be faced with this tax. [Tower Associates](#) estimates that 48% of larger employer plans will be faced with this tax in 2018 and 82% will face it by 2023 unless they make radical changes in their current benefit plans.

Because the tax is triggered by the total cost of the plan, merely shifting premium costs from employers to workers will not solve the problem. Once the “low hanging fruits” of duplicative coverages, inefficient administrative procedures, etc. are addressed (which may, in fact, get many unions through the next round of contract negotiations), plans will have to be radically re-designed. Some of the changes employers are contemplating include:

- ▶ According to the [International Foundation of Employee Benefit Plans](#), “The most common action taken to avoid triggering the excise tax is moving to a consumer driven health plan.” These are high deductible, high co-pay plans that have a disparate impact on the sickest and most vulnerable workers.
- ▶ These plans are often accompanied by extremely narrow networks with high out of network penalties and “reference pricing.”
- ▶ Employers are looking to streamline plans and eliminate high cost options, and limit FSA’s and HSA’s.
- ▶ [Aon Hewitt](#) reports that 31% of employers are considering expanding “wellness initiatives.” In corporate hands, these programs often assume a “blame the victim” punitive approach that has a disparate impact on the most vulnerable.
- ▶ [Aon Hewitt](#) also reports that 14% of employers are considering reducing spousal eligibility (working spouses would, presumably, be covered by their own employers under the ACA’s employer mandate provisions).

Union workers are in the crosshairs. They still set the standard for employment based coverage and they are just about the only workers in a position to resist changes in their benefits. This issue will be on the table in almost every contract negotiations and may drive employer demands to reopen contracts that expire later than 2018.

Public employers are also liable for the excise tax. Since public sector health benefits tend to be more generous than private sector benefits, they are particularly vulnerable to the tax. The [Association of Washington Cities](#) calculated that the municipalities in its plan would have to raise an additional \$76 million in local taxes over 10 years to pay for new excise tax liabilities. At a time when private sector workers are experiencing cuts to their own benefits, this situation provides a powerful breeding ground for the “politics of resentment” attacks on public workers’ rights.

Since the tax is triggered by the total premium cost, not just the percentage that employers pay, some unions are considering trading off concessions on higher co-pays and deductibles, which will have an impact on total premium costs, for lower premium cost sharing. For example, a union might agree to pay \$1,000 more in deductibles in exchange for a \$1,000 decrease in employee contributions toward the premium. This could provide some short term relief while testing whether the employer is interested in avoiding tax liability or really just wants to shift more costs onto the back of its employees.

## What are the flawed assumptions underlying the excise tax?

### Falsehood # 1: The excise tax is needed to provide major funding for ACA programs.

The [CBO](#) estimates that the excise tax is expected to raise \$87 billion over ten years. This is down from its \$137 billion estimate just a few months earlier. It will continue to decline both because some of the ACA measures are having a genuine impact on overall health care cost trends and because employers have already accelerated the amount of cost shifting onto workers. This additional revenue is needed because the ACA attempts to expand health insurance coverage without disrupting the wasteful, profit-driven private insurance system.

Thus, while continuing to rely on employment-based coverage to provide the lion's share of working Americans' healthcare insurance, the ACA perversely undermines these very benefits in order to pay subsidies to purchase inferior types of private insurance through the exchanges. And it establishes a punitive tax rate on working class healthcare to bolster this inefficient and profit-ridden system. Why not a 40% excise tax on the "Cadillac profits" of big pharmaceutical companies? Or a 40% tax on the "Cadillac salaries" of healthcare executives?

**Under a single-payer Medicare for All system, everyone would be covered for less than what we currently pay for a system that provides, at best, partial coverage.**

### Falsehood # 2: Forcing people to pay more for their healthcare will cut costs and teach them to be responsible consumers.

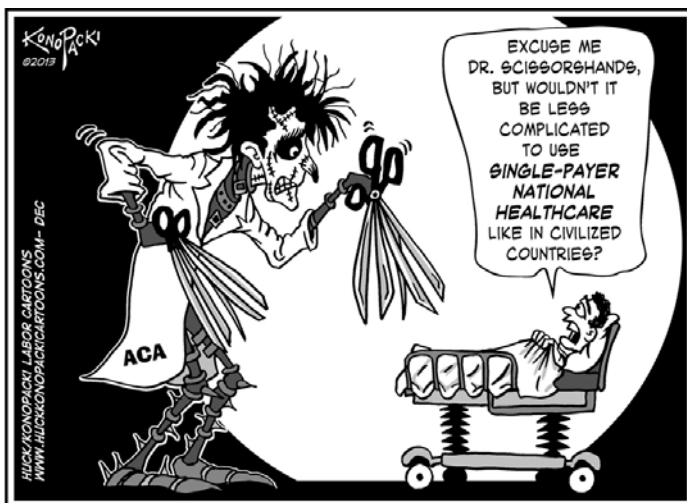
The tax is deliberately designed to move employers into "consumer driven" plans under the barbaric assumption that if workers have more "skin in the game" they will more carefully utilize healthcare services and shop around for the best costs. This is based on the neo-liberal model of treating healthcare as a commodity and treating patients as consumers subject to market discipline.

[Studies](#) have shown that this model is an abject failure when applied to healthcare. It does little to reduce overall costs while forcing working people to make cruel choices and to defer needed care until the problems are made worse by neglect. It is absurd to contend that Americans choose to receive healthcare they don't need simply because it won't cost them much. Patients should not be held accountable for the inability of the healthcare system to manage its costs.

**Under single-payer Medicare for All, there will be no financial barriers to care.**

**Falsehood # 3: Healthcare benefits are merely deferred wages and restricting their tax deductibility will not affect workers overall compensation.**

Classical economics considers benefits to be “deferred wages.” In this theory, treating benefits as deductible while taxing wages creates huge incentives for overly generous benefits. If this incentive is reduced, this theory contends that an employer will automatically increase wages to compensate for lower benefit costs. This theory, of course, neglects the real world power equations between wage labor and capital. In fact, James Klein, the [President of the American Benefits Council](#) recently stated that, “Not one employer with whom I have spoken in the past five years believes that it will increase wages by the amount it will be compelled to reduce health benefits.”



It is true that unions have bargained healthcare benefits as part of a total compensation package and have often sacrificed wage gains in order to preserve healthcare benefits for themselves and their families. However, in an era of massive inequality and unrestricted corporate power, it is highly unlikely that most unions will be able to recover these deferred wages. Non-union workers will fare even worse. The more likely outcome is that workers’ pre-tax benefits will be cut while they pay more of their healthcare costs out of their post-tax wages. The tax undermines the 75-year tax deductibility for employer-paid healthcare benefits and reflects the principle that tax policy should be used to provide incentives for desirable social goals. Taxation of health benefits treats healthcare as if it were a privilege and a luxury rather than a necessary right in a civilized society.

**Under a single-payer Medicare for All system, healthcare would be a public good financed through an equitable tax policy.**

## Strange Bedfellows

**Unions** have always opposed the Cadillac tax. They saw it as a direct assault on their hard won benefits, adding new momentum to the cost-shifting, benefit-cutting employer assaults at the bargaining table. Their concerns are well founded as most employers have insisted that they need the ability to make whatever changes to benefits are necessary to avoid any tax liability.

**Large corporations** have recently added their voices in opposition as they have come to realize that the tax would jeopardize the benefits of their own top executives and other highly compensated employees and limit their flexibility to attract and retain employees. [U.S. Chamber of Commerce President Thomas Donahue](#) recently called for the taxes' repeal and said that it was "ironic" that the ACA requires all employers with 50 or more employees to provide minimum value coverage while, "[T]he very same employers will face a penalty if that mandated coverage exceeds the inadequately indexed dollar thresholds. Damned if they do, damned if they don't."

**Right wing ideologues**, opposed to the very idea of social insurance are on a frantic crusade to overturn Obamacare at any cost. They are also eager to overturn the excise tax.

## What Happens Next?

- ▶ Employers will continue to implement radical changes in order to avoid tax liability. This will turn nearly every contract negotiation into a war zone. Often the Cadillac tax will be used as pretext for changes employers planned to implement regardless.
- ▶ There is a growing movement to repeal the excise tax that is developing bipartisan political support. Rep. Courtney (D. CT) has introduced [HR 2050](#), "The Middle Class Health Benefits Tax Repeal Act of 2015". The bill has 160 co-sponsors; many of them Democrats who traditionally support labor initiatives (including single-payer champion John Conyers). A number of union leaders have supported the Bill including LIUNA President Terry O'Sullivan, AFT President Randi Weingarten, AFSCME President Lee Saunders and D. Taylor of UNITE HERE. Rep. Frank Giunta (R. NH) has introduced the nearly identical [HR 879](#) "The Tax on Middle Class Americans' Health Plans Act of 2015". That bill currently has 106 co-sponsors (all Republicans) and is endorsed by the Business Roundtable and other employer groups.
- ▶ Similar bills have been introduced in the Senate by [Senators Heller \(R., NV\) and Heinrich \(D., NM\)](#) and [Senator Sanders \(I., VT\) and Brown \(D., OH\)](#). All current announced Democratic candidates for president support repeal.

The Obama administration has not yet weighed in on the prospects of excise tax repeal. However, many of the architects of the Affordable Care Act are deeply wedded to the neoliberal "skin in the game" theory. They believe that this policy is necessary to restrain cost increases over the long term. Both the [New York Times](#) and the [Washington Post](#) have recently featured editorials cautioning against repeal. UNITE HERE President D. Taylor recently stated that, "The Obama Administration and most Senate Democratic offices are against us and are doing everything in their power to stop our momentum and keep us from achieving our goal of repealing this tax. It is a strategic and tactical mistake of the highest order to begin negotiating with ourselves on full repeal just as our campaign gains significant momentum."

- ▶ Other constituencies who benefit from aspects of the ACA may oppose excise tax repeal because it would undermine the funding for important programs. This may put many national unions in a difficult conundrum: do they align themselves with groups representing anti-union large corporations and tea party Republicans and oppose efforts by groups advocating for the working poor and other working class Americans worried about continued funding of expanded Medicaid and subsidized private insurance? We must be on guard against all efforts to pit one section of the working class against another while healthcare profiteers are allowed to thrive unchallenged.

## Which way to healthcare justice?

- ▶ The pending implementation of the excise tax will be a central and growing concern for the entire labor movement both at the bargaining table and in the political sphere.
- ▶ LCSP has always stood in solidarity with all workers who fight to preserve and expand their hard-won healthcare benefits under the current dysfunctional for-profit healthcare system. And holding employers feet to the fire at the bargaining table is one way to get them to take a serious look at the single-payer option. We stand with labor in calling for the repeal of this unjust and punitive tax.
- ▶ But the only long-term solution for workers is to take healthcare off the bargaining table and make it a right for everyone in America. Unions increasingly understand that the best way to guarantee access to quality, affordable healthcare for their members is to guarantee it to everyone.
- ▶ Repeal of the excise tax may provide a temporary respite at some bargaining tables but the longstanding trends to shift costs and cut benefits will continue. These trends are driven by constantly accelerating healthcare costs. The ACA does not fundamentally alter these trends because it does nothing to address the profiteering and wasteful administrative costs at the core of the system. Ultimately, employers seek to turn a defined benefit system of healthcare coverage into a defined contribution-style program and to make healthcare an individual responsibility. This will have a devastating impact on working class Americans.
- ▶ Contract negotiations continue to be one of the most important teaching and mobilizing moments and we urge unions to use these opportunities to connect the fight for a decent contract with the historic fight to win healthcare for all and to build and strengthen the kind of alliances that are necessary to win both fights.

### ***Labor Campaign for Single Payer Healthcare***

The Labor Campaign for Single Payer is funded entirely by labor organizations and union members. Please consider making a contribution online or by check payable to Labor for Single Payer mailed to :

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