

Labor Campaign for **SINGLE PAYER HEALTHCARE**

A LCSP Briefing Paper

Watch Out: The ACA is Coming! 10 Things Unions Need to Look Out for When Bargaining Under Obamacare

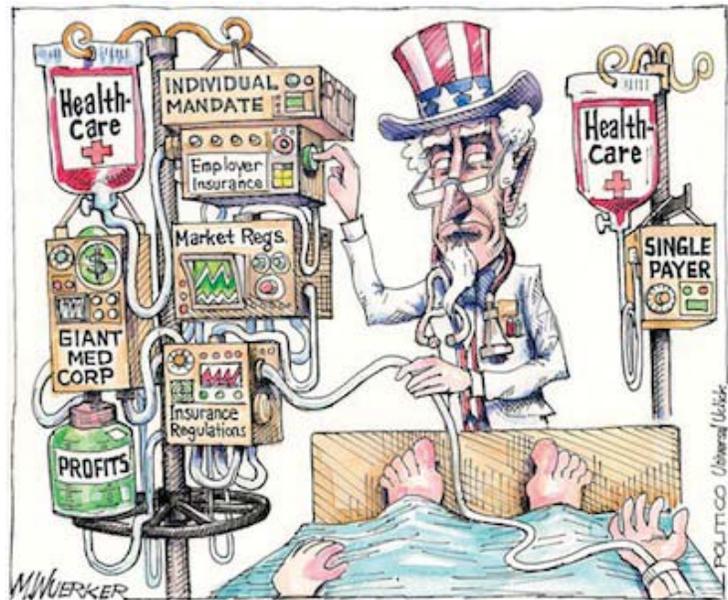
The Affordable Care Act (ACA) has been the law of the land since 2010. Although its key Medicaid expansion provision has been significantly weakened by the 2012 Supreme Court decision and it remains a target for attack and disruption by the right wing, it is clearly here to stay. The ACA is a very complex piece of legislation with a number of moving parts. While some minor provisions are already in effect, most of the major ones are scheduled to come on line beginning on January 1, 2014. These include:

- The expansion of Medicaid coverage to anyone earning up to 138% of the federal poverty level (fpl) in states that approve it; currently 29 are moving towards Medicaid expansion and 15 have definitely opted out.
- The implementation of the individual mandate to purchase insurance if you are not covered through a public or employer plan. (Because of difficulties with the online enrollment process, the deadline for individual enrollment has been extended to March 31, 2014; the requirement that employers provide affordable health insurance or pay a fine was deferred to 2015.)
- The establishment of state or federally run healthcare exchanges where individuals and small employers can purchase private insurance.
- The initiation of subsidies for the purchase of private insurance for individuals and families up to 400% fpl who do not have adequate coverage from employer or government sources. (Because of the Supreme Court decision, persons earning less than 138% fpl in states that have opted to deny their residents access to expanded Medicaid coverage are *not* eligible for subsidized benefits.)

For many years now, healthcare benefits have been among the most contentious bargaining issues and the biggest cause of strikes, lockouts and concession bargaining. Because the ACA is so complex and its implementation is spread over years, its impact on collective bargaining is still unclear (the UC Berkeley Labor Center has a good overview [here](#)). The situation is complicated by the fact that employers have used the ACA as pretext for benefit cuts and demands for concessions. As always, it is a good idea to question and verify any claims from employers that proposed changes in negotiated benefits are required by the ACA.

While there is much that is still uncertain, unions have begun to grapple with the complex, and often unanticipated, impact of the ACA on collective bargaining and the hard-won healthcare benefits of union members. At the 2013 AFL-CIO Convention, there was a vigorous debate about the need to change the ACA to protect working families and allow union-sponsored Multi-Employer Plans to survive and continue to offer quality benefits at competitive prices. All agreed that the only effective long-term solution is a single-payer, Medicare for All national healthcare system. [Convention Resolution 54](#) summarizes many of these concerns.

Some unions have called for the repeal of Obamacare and a return to the status quo before its passage. We in the Labor Campaign believe that such a call would be a disaster for the labor movement. It would undermine the unity of the labor movement, divorce us from key allies and demoralize us about the very possibility of healthcare reform. Rather, we believe that this is a moment to move forward to healthcare justice by acknowledging the weaknesses in the ACA while defending its gains and moving to establish a single-payer Medicare for All system that would make healthcare a right for everyone in America.



One thing is certain, however: because the ACA does nothing to take healthcare off the bargaining table, the long-term trends to shift costs, cut benefits and move towards a “defined contribution” healthcare approach will continue. In fact, because it relies on employment-based coverage to provide the lion’s share of healthcare insurance while, perversely, undermining key aspects of that coverage, we have concluded that the ACA will place new stresses and pressures on collective bargaining.

The Labor Campaign for Single Payer believes that contract negotiations are an important teaching and mobilizing moment around the need to move forward to a publicly funded national healthcare system that treats healthcare as a basic human right rather than an incidental benefit of employment. At the same time, we recognize that unions must continue to fight for their members’ immediate concerns and we stand in solidarity with all workers who fight to preserve and expand their hard-won healthcare benefits as a survival strategy under the current dysfunctional for-profit healthcare system.

threats that all unionists should be aware of as they prepare for the next round of bargaining under the ACA:

1

Watch Out for the “Wal-Mart Loophole.” Employers with 50 or more full time employees must provide basic medical coverage or pay a \$2,000 per employee annual penalty for each uncovered employee beyond the first 30 employees. While this penalty is far below what health insurance would cost, at nearly \$1 per hour worked, it is not insubstantial, particularly for low wage employees. The ACA defines “full time” as working 30 or more hours per week (or 120 hours per month). It creates an incentive to replace full time workers with part timers and to keep part timers’ hours below 30 per week. Many union companies with large numbers of part time workers, particularly in retail, are moving to eliminate benefits for all part timers to conform with the ACA mandates that their non-union competitors will be following. Temp agencies have even more flexibility than regular employers as the IRS regulations allow them up to 12 months to determine whether an employee is full-time. Very few workers work for the same agency regularly for a 12-month period, allowing them to manipulate schedules and hours.

Look out for: *Employer demands for more “flexibility” in scheduling, outsourcing and insourcing and restricting access to employer coverage to the minimums under the ACA.*

2

The Race to the Bottom Just Got Faster. The ACA sets up four tiers of insurance plans starting at a Bronze level (designed to reimburse roughly 60% of covered medical expenses) and ending at Platinum (reimbursing roughly 90%). Most union plans are near or above the Platinum level. Subsidies for benefits available through the state health insurance exchanges will be based on the second most expensive Silver (70%) plan available through the state exchanges. In addition, the ACA defines “affordable” coverage as a Bronze-level plan that costs an employee no more than 9.5% of *family* income for *individual* coverage. These standards will slowly become the prevailing benchmarks for employer coverage. As the benefits in the private sector get reduced, public employees’ hard won benefits will become even more vulnerable as demagogues work to turn anger into resentment of “spoiled” public workers and their platinum benefits.

Look out for: *The Silver and Bronze plans becoming the new “Gold Standard” of employer provided coverage. Employers refusing to cover employed spouses who have access to “affordable” coverage through their own employer.*

3

The Cadillac Tax Will Speed Up Cost Shifting. Beginning in 2018, a 40% excise tax will be levied on all insurance costs in excess of \$10,200 per year for single coverage and \$27,500 for family coverage (the threshold is slightly higher for certain “high risk professions” and certain benefits are excluded from these calculations). The tax is levied on the insurance provider, or the employer or union health plan, if self-insured. About 20% of workers will be affected when the tax takes effect in 2018. However, in high cost states like Massachusetts, over 50% of the workers will be immediately affected. The tax

disproportionately impacts older and sicker workforces. In addition, the tax threshold is adjusted annually by the CPI percentage increase for that year. Since medical costs often increase at 3 or more times the annual CPI percentage increase, by the mid-2020's, nearly all union-negotiated health benefits (as presently constituted) will be subject to the tax. The employer response to this tax will be to cut benefits and shift costs onto workers in order to stay below the thresholds. It has already affected major national contract bargaining at corporations like Verizon and GE. In response to this tax, 40% of all large employers plan to institute high deductible health plans by 2014.

Look out for: *High-deductible and defined contribution plans replacing many corporate health plans. Union-supported Multi-Employer Plans forced to make major cuts in benefits and increases in co-pays to avoid being subject to the 40% excise tax.*

4

No Immigrants Need Apply. Undocumented immigrants (including all of the “Dreamer” children saved from deportation by President Obama’s executive order) are denied all benefits under the ACA. Immigrants with papers have a 5-year waiting period before they can receive most benefits. This mean-spirited policy violates both the basic precepts of public health and basic fairness by taxing people for benefits that they are ineligible to receive. It will create conflicts and tensions in some union workplaces. Small employers providing coverage through the state exchange systems may be required to institute new employment verification systems.

Look out for: *New employer initiatives to institute employee verification systems and to exclude immigrants from coverage.*

5

Non-Profit Union-Sponsored Plans Will Be Taxed to Support For-Profit Private Insurance. Non-profit Multi-Employer Plans (including all plans administered by what are commonly called “Taft Hartley Funds”) will have to pay an annual “reinsurance fee” to subsidize for-profit insurance plans sold through the exchange. The fee for 2014 will be approximately \$63 per covered life (\$252 for a family of four). A medium size plan with 20,000 covered lives is facing over \$1 million per year in additional costs. It is particularly irksome that this money will be used to subsidize for-profit insurance companies for losses they might incur on the exchange.

Look out for: *Hard pressed multi-employer plans shifting more costs and/or restricting coverage in order to meet this new obligation.*

6

Subsidized Exchange Plans Could Undercut Union Benefits. Because Multi-Employer Plans are classed as “employer plans”, participants will not be eligible for the subsidies that they would receive if they purchased insurance through a state insurance exchange. Since subsidies apply to incomes up to 4 times the federal poverty level (over \$90,000 a year for a family of four), this puts Multi Employer Plans at a huge competitive disadvantage. A non-union hotel, for example, could have almost all of its employees receive subsidized coverage from the exchange while a unionized hotel participating in a Multi-Employer Plan would receive no subsidies.

Look out for: *Employers demanding to exit Multi Employer Plans, causing a downward spiral as the Plan is left with obligations to older, sicker and retired workers.*

7**Some Employers May Try to Leave Multi-Employer Plans to Receive a Tax**

Credit. Many employers covered under Multi-Employer Plans are considered “small” employers under the ACA (93% of all union firms in the construction industry, for example, are “small employers”). The ACA allows small employers with less than 50 full time employees to purchase benefits from state exchanges. Employers with less than 25 employees with an average wage of under \$50,000 will receive a 50% tax credit if they purchase insurance on the exchange but no tax credit if they pay into a MEP. This will create an incentive for employers to leave the union plans and buy into the exchanges. ***Look out for:** Non-union employers undercutting union market share in construction, entertainment, hospitality and similarly structured industries. Union employers demanding the elimination of their Multi-Employer Plan obligations.*

8

Retirees Will Be Pushed to the Exchanges. The ACA will have little impact on retirees over the age of 65. They will continue to receive Medicare as their primary insurance and unions will continue to negotiate supplemental coverage when possible. However, because the state exchanges will provide subsidized insurance with no pre-existing conditions or other bars to coverage, the ACA will accelerate the elimination of retiree medical benefits for under-65 retirees. Retirees purchasing benefits on the exchanges cannot receive an employer subsidy but may be eligible for a federal subsidy. In some cases, cost shifting may be so severe that retirees would be better off purchasing their own insurance. Employers may also contract with private exchanges and give their pre-65 retirees a defined contribution to purchase benefits from them.

***Look out for:** An acceleration of employer demands to eliminate retiree medical benefits now that retirees have “options” available to them on the state plans. The use of private exchanges to limit retiree benefits.*

9

Corporate Wellness Programs Will Expand. The ACA allows employers to charge up to 30% more in premiums for employees who do not participate in corporate “wellness” programs. While most unionists would support a well-designed program aimed to assist workers in adopting a healthier lifestyle, many corporate programs are thinly disguised forms of cost shifting and employ a “blame the victim” approach to worker health. Studies have shown that wellness programs do little to improve the health of enrolled workers. In addition, most “wellness” programs ignore the environmental and working condition impacts on employee health. California Nurses Association Co-President DeAnn McEwan has charged that many of these programs are, “a backdoor for discrimination by redlining individuals with pre-existing conditions and disabilities.”

***Look out for:** Employer proposals to set up “blame the victim” programs with financial penalties for those who cannot or will not comply.*

10

Private Exchanges Are Coming. 56% of all employers are planning to move to “private exchanges” as a way to meet their healthcare obligation under the ACA. In a private exchange, an employer designates a set amount or “credit” for each employee. The employee can then select from a “menu” of benefits available through the private exchange and pay the difference between the “credit” and the cost of the selected benefits. As long

as all employees receive minimally “affordable” coverage as defined by the ACA (coverage that reimburses approximately 60% of covered expenses at a cost no greater than 9.5% of family income for individual coverage), employers will incur no penalties or fees. This migration to defined contribution benefits coupled with the assertion that healthcare is an individual responsibility is the most insidious consequence of the ACA.

Look out for: Private exchanges accelerating the trend to convert defined benefit medical plans into defined contribution plans and the use of “personal choice” as a euphemism for cost shifting

Everybody In! Nobody Out!

Union-negotiated healthcare benefits have traditionally been based on a “solidarity model” that covers all workers under equal terms and conditions, assigns cost to those in a position to pay them and provides coverage based on the needs of workers and their families. Many of the provisions of the ACA will work to further erode this model by breaking up bargaining units and families and replacing it with a “consumer-driven” model where each worker is on his or her own to navigate a complex system with limited resources.

A single-payer, Medicare-for-All system establishes the “solidarity model” as a universal principle and takes healthcare off the bargaining table by making it a fundamental human right. Until we achieve healthcare justice, workers must fight for the best deal they can get under the current dysfunctional employment-based system.

The Labor Campaign for Single Payer unconditionally supports those fights. At the same time, we urge unions engaged in tough bargaining over healthcare to use those fights as a teaching moment and connect them with the fight to win healthcare for all.

The best way to guarantee healthcare for every worker is by guaranteeing healthcare for all!

For more information, go to www.laborforsinglepayer.org
Contact us at organizers@laborforsinglepayer.org

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 LCSP, 2929 S. Jefferson Ave., St. Louis, MO 63118.

