Obama Administration Poised to Exempt Unions From ObamaCare Tax

Labor unions, longtime supporters of the Democratic Party, have been clamoring for changes to ObamaCare for months, and now it appears that they will get at least one of their wishes: an exemption from a tax on health insurance.

On October 30, the Department of Health and Human Services (HHS) published a typically wordy final rule whose even longer preamble included the following sentence: "We also intend to propose in future rulemaking to exempt certain self-insured, self-administered plans from the requirement to make reinsurance contributions for the 2015 and 2016 benefit years."

Quietly sneaking proposals into preambles that few read "is how HHS often breaks controversial regulatory news," wrote benefits lawyer R. Pepper Crutcher, Jr.

The most obvious point of controversy is that the rule exempts certain insurance plans, but not others, from the insurance tax (or "fee" in ObamaCare lingo) that takes effect next year. That tax will come to $63 per covered person in 2014, $42 per person in 2015, and $26 per person in 2016, after which it is scheduled to end.

Moreover, when one examines which plans would be exempt under the regulation, it becomes clear that one and only one entity stands to reap huge gains from it: Big Labor.

''We were really scratching our heads about who actually benefits from this,'' health insurance compliance attorney Ed Fensholt told the Associated Press. ''It certainly isn't aimed at employers because employers don't really self-administer their plans.''

Many unions, on the other hand, do. A significant number of union members belong to multiemployer health plans, also called Taft-Hartley plans. "Bargained by unions and jointly administered with employers," explained *Labor Notes*, such plans "cover members and families not just while they are working intermittently but through periods of unemployment and even during retirement. They provide the same coverage for everyone, regardless of age, family status, or health status." In other words, they're a very good deal for union members.

Since these plans are self-administered, they will be exempt from the ObamaCare insurance tax — albeit only for two of three years the tax will be in effect — if the proposed regulation is adopted, saving unions a bundle while leaving non-unionized individuals and employers in the lurch.

"It's outrageous that the Obama administration is ignoring the plain language of the law he insisted on to deliver another bailout to the union bosses," Fred Wszolek of the Workforce Fairness Institute told the *Washington Examiner*. “Either follow the law and tax every insurance plan, or repeal the whole thing, but there’s no legal basis for another expensive favor for big labor.”

Labor leaders, naturally, are trying to portray the rule’s benefits to unions as simply a happy coincidence.
‘‘It applies to self-administered funds, whether they are Taft-Hartley or not,’’ AFL-CIO president Richard Trumka told reporters.

Of course, as Fensholt pointed out, employers generally farm out the administration of their health plans to third parties. Only among unions is the practice of self-administration widespread.

What’s more, noted Kaiser Health News, “eliminating the reinsurance fee was one of several resolutions adopted at the AFL-CIO’s September convention, along with giving union plans access to ACA [Affordable Care Act] tax credits for lower-income members.” While the Obama administration rejected the latter request, it appears poised to grant the former, at least in part — a wise political move in light of the fact that union members are so opposed to many of ObamaCare’s provisions that the president, according to *Forbes*, “personally intervened to prevent” the AFL-CIO from passing a resolution demanding full repeal of the healthcare law.

The insurance tax, which is expected to raise $25 billion over the next three years, is supposed to help offset insurers’ costs of covering the many individuals with pre-existing conditions they will now be forced to cover. Both unions and large businesses have argued that it is unfair to impose this tax on them when they will derive no benefit from it: Their plans already cover people with pre-existing conditions, and only insurance companies can receive the subsidy funded by the tax. Yet only unions, by and large, will be exempted from the tax under the proposed rule.

That inequity is not sitting well with businesses, the AP reported:

> Gretchen Young, senior vice president for health policy at the ERISA Industry Committee, a group that represents large employers on benefits issues, said it would be ‘‘very unfair’’ to single out one group of employers who are contributing money and not let everybody out of it.

‘‘All self-funded plans are in the same position of having to pay this three-year fee but getting no direct benefit in return,’’ Young said.

She said hardly any employers in her group, which includes the nation’s largest corporations, would benefit under the administration’s language.

Congressional Republicans are also unhappy with the proposal. Senate Majority Leader Harry Reid (D-Nev.) tried to negotiate a similar union exemption during last month’s budget negotiations but failed in the face of GOP opposition. The previous month, 21 Republican senators, led by Sens. Lamar Alexander (R-Tenn.) and Orrin Hatch (R-Utah), sent a letter to Office of Management and Budget director Sylvia Burwell urging her “not to authorize the release of any regulations that will create a special carve-out that benefits union workers at taxpayers’ expense.”

“It certainly looks like the Obama administration is looking at a special deal for unions, which is deeply concerning given the problems that all Americans are facing due to ObamaCare,” Hatch told the AP after the rule proposal became public.

Should the rule be finalized as described, it will be just the latest in a long line of regulatory exemptions for favored groups. “At this point,” observed TownHall.com’s Katie Pavlich,

> Congress has granted themselves an Obamacare waiver. The Obama administration has granted

> corporations and businesses an Obamacare waiver until 2015 by delaying the employer mandate. The average American citizen however, of whom millions are losing health insurance plans President Obama promised they could keep, is still required to comply with all aspects of the law and the individual mandate. And yes, this is still a requirement for individuals even with a broken and nonworking Obamacare website.

As unions and big businesses have learned, it pays to have friends in high places. And as the rest of us are learning, those without such pals do the paying.

Photo is of President Obama and Democrats cheering the passage of ObamaCare