

Unions Get Big ObamaCare Christmas Present As Other Self-Insured Groups Get Scrooged



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[Opinion](#)

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As a presumed constitutional scholar, Barack Obama should know that while a president has authority to check the Legislative Branch by recommending legislation to be passed by Congress, or through presidential veto, he or she cannot legislate through executive fiat or pick which parts of the law to comply with or decline. Article 2, Section 3, Clause 5 of our Constitution requires that the president “...shall take care that the Laws be carefully executed.” It doesn’t limit those laws or encapsulated provisions to the particular ones that he or she likes.

Speaking before the House Judiciary Committee on December 3, Professor Jonathan Turley of George Washington University observed that the president isn’t taking that “Laws be faithfully executed” oath very seriously, particularly with regard to his signature Affordable Care Act (aka. “ObamaCare”).



Scrooge (Photo credit: Wikipedia)

Although Turley had voted for Obama and professes to agree with him on health care and other issues, he warned that his power grabs are causing “*the most serious constitutional crisis in my lifetime.*”

The White House Earns Its Union Label

In addition to delaying and rewriting key ACA provisions and carving out a special subsidy for members of Congress, Obama’s latest constitutional violation will exempt unions from a fee the law imposes upon all large group health plans. That provision which appears in Section 1341 (b)(1)(A) establishes a reinsurance program to compensate insurers on exchanges in the individual market if they are hit with higher than expected costs to cover those with pre-existing conditions. This will come from insurers and self-insured employers who pay in proportion to

the number of people they cover. The target is to raise \$25 billion during 2014, amounting to \$63 per covered employee. The union exemption would kick in for 2015 and 2016.

As reported in a [Wall Street Journal editorial](#), *"The unions hate this reinsurance transfer because it takes from their members in the form of higher premiums and gives to people on the exchanges."*

The [union exemption deal](#) will require that insurers who aren't fully reimbursed by fees along with non-exempted self-insured employers will have to pay more to make up the shortfall. How will they make that up? How else but by passing on higher costs to their customers? The Department of Health and Human Services has confirmed that the fee for other non-exempt plans will be higher as a result.

Responding to union pressure, an exemption buried on page 72,340 of the December 2 *Federal Register* states: *"Our continued study of this issue leads us to believe that this provision may reasonably be interpreted in one of two ways – it may be interpreted to mean that self-insured, self-administered plans must make reinsurance contributions, or it may be interpreted to mean that such plans are excluded from the obligation...upon further consideration of the issue, we believe the statutory language can reasonably be read..."*

Yet as [Betsy McCaughey points out](#) in an *Investor's Business Daily* piece, while Taft-Hartley plans self-insure and self-administer, the weasel-wording is a ruse. She writes: *"That's a lie. The ACA's reinsurance provision doesn't use the word 'self-insured' or distinguish between plans that pay their own claims and plans that hire administrators."*

Here, "self-insured" refers to a business which pays directly for its workers' policy costs and hires an insurer as a third-party administrator to process claims and manage care. "Self-administered" plans go one step farther and manage their benefits in-house. As the *Wall Street Journal* observes, other than collectively-bargained Taft-Hartley plans, *"Almost no business in the real world still follows this old-fashioned practice"*. Such insurance covers about 20 million union members, and about four out of five Taft-Hartley trusts.

Eleven Republican senators who see the exemption as blatant congressional circumvention and cronyism by the Obama administration to curry favor with political allies have introduced a bill called the "Union Tax Fairness Act" (S. 1724) to block it. Included are U.S. Senators Orrin Hatch (R-UT), John Thune (R-SD), Lamar Alexander (R-Tenn.), James Inhofe (R-OK), David Vitter (R-LA), Mike Enzi (R-WY), Ron Johnson (R-WI), John Barrasso (R-WY), Tim Scott (R-SC), Saxby Chambliss (R-GA), and Tom Coburn (R-OK).

Senator Hatch [commented](#): *"Since the overwhelming majority of self-administered health insurance plans are run by unions, let's call this what it is: a political payback by the administration to its union friends for backing this disastrous law. But the fact is, the White House doesn't have the authority to change the law on its own and, as this bill makes clear, any attempt at a Big Labor carve-out from ObamaCare must be approved by Congress."*

Senator Thune [said](#): *"Unions should not be granted a special exemption from ObamaCare's reinsurance tax just because the president fears further union backlash on his signature law. These unions agreed to pay this tax when they endorsed ObamaCare, but now that they are finding out what the law means for them and their plans, they want out. Rather than granting special backroom deals to political allies, the administration should support fairness for all by permanently delaying the law for every American."*

Senator Alexander [added](#): *"The Obama administration should not reward its labor union friends and allies who helped pass the health care law by giving them a carve-out from the law's worst provisions. This hefty reinsurance fee is one of the many job-killing taxes that helped pay for the passage of the law - the administration should be embarrassed that it would consider exempting their union cronies without providing similar relief to our nation's employers and faith-based and charitable organizations."*

Insurers Avoid a Bitter Pill

The unions weren't the only cronies to get a special ObamaCare break. Insurers who went along with ACA from the beginning in order to expand markets from previously uninsured populations on the taxpayer dole didn't want any of that same medicine for themselves.

Ten giant health insurance companies, including Blue Cross/Blue Shield, Cigna and Aetna, went to the White House and [received waivers](#) allowing them to impose yearly cap limits on health coverage they provide to their own employees. Under ObamaCare, companies which aren't exempt are required to phase out caps on annual health care benefits by 2014.

Cigna Corp., the largest waiver exemption beneficiary, was allowed to cap benefits for its 265,000 employees. This exception was granted just slightly less than one month before its CEO David M. Cordani told attendees at a November 9, 2010 Reuters Health Summit: *"I don't think it's in our society's best interest to expend energy in repealing the law."*

Aetna was granted a waiver on October 1, 2010 allowing it to cap benefits for its 209,423 enrollees. The company's CEO Mark Bertolini had previously expressed mixed feelings about the legislation. Writing in a March 2010 Op/Ed which appeared in the *Hartford Courant* shortly after it became law, he said: *"When fully implemented, the new law will have a major effect on the market...Individuals and small employers will have more options and choices. The private sector will do what it does best: innovate to solve problems,"*

The BCS Insurance Group which notes on their website *"We are the premier source for insurance and reinsurance for Blue Cross and Blue Shield plans"* received an ObamaCare waiver for its 115,000 enrollees. In fact three divisions of Blue Cross/Blue Shield reportedly received waivers. They include Excellus Blue Cross/Blue Shield (18,860 enrollees), Blue Cross/Blue/Shield of Tennessee (20,205 enrollees), and Mountain State Blue Cross/Blue Shield with 270 enrollees.

HHS waivers from oversight rules were granted to "Medigap" policy providers which exempts them from releasing and explaining health care payment rate increases. According to the *Daily*

Caller, AARP, the largest of these, advocated for ObamaCare to include an attack on their biggest competitor, Medicare Advantage.

AARP was a [driving force](#) behind getting ObamaCare through Congress. They conducted a \$121 million advertising campaign to push it, plus spent millions more lobbying for it on Capitol Hill. After President Obama called for \$313 billion in Medicare cuts to fund his signature program, Medicare Advantage took the big hit.

Broken Premises

Don't forget that ObamaCare would have encountered the same forgotten fate as HillaryCare had it not been for the [support of big unions and insurers](#). Perhaps recall those throngs of United Federation of Teachers (UFT) and Service Employee International Union (SEIU) members picketing the Supreme Court in favor of its approval carrying signs that read *"Protect Working Families, Protect the Law"*.

And they already received gratitude. Immediately after the provisions took effect, unions requested and were granted 1,231 waivers exempting 543,812 of their employees compared with only 69, 813 non-union worker exemptions.

Now many of those former union supporters are claiming that they didn't understand the unintended consequences and are advocating serious ACA revisions...even calling for repeal. Kinsey Robinson, president of the United Union of Roofers, Waterproofers and Allied Workers urged: *"In the rush to achieve its passage, many of the act's provisions were not fully conceived, resulting in unintended consequences that are inconsistent with the promise that those who were satisfied with their employer-sponsored coverage could keep it...I am therefore calling for repeal or complete reform of the Affordable Care Act."*

Joe Hansen, president of the United Food and Commercial Workers International Union lamented: *"It makes an untruth out of what the president said – that if you like your insurance you can keep it, that is not going to be true for millions of workers now."*

David Treanor, director of health care initiatives at the Operating Engineers union said: *"We're concerned that employers will be increasingly tempted to drop coverage through our plans and let members fend for themselves on health exchanges."*

Welcome to the new world of ObamaCare reality. But then, Merry Christmas and Happy Hanukah anyway!



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