

Resolution 54

AFL-CIO CONVENTION RESOLUTION ON THE AFFORDABLE CARE ACT

WHEREAS, in 2009, the AFL-CIO Convention passed two health care resolutions—Health Care Reform Now and the Social Insurance Model for Health Care Reform—which reaffirmed the labor movement’s commitment to health care for all, ultimately through a single-payer system. In 2010, Congress passed the Affordable Care Act (ACA);

WHEREAS, the AFL-CIO continues to support the ACA’s goal of securing high-quality, affordable health coverage for all Americans; three years after the passage of the Affordable Care Act, we reaffirm our commitment to the goal of affordable, quality health care for all but recognize that the ACA remains a work in progress;

WHEREAS, the ACA’s expansion of comprehensive health insurance to 25 million more Americans, support for affordability through expanded Medicaid eligibility and premium subsidies and insurance market reforms are clear gains for working families. The new law also has eliminated some of the worst insurance company abuses, cut costs for seniors, and appears to be contributing to lower rates for individual coverage in states like California and New York;

WHEREAS, the federal agencies administering the ACA have interpreted the Act in ways that are threatening the ability of workers to keep health care coverage through some collectively bargained, non-profit health care funds. Republican governors in many states have refused to participate in implementing the Act and are even actively blocking efforts to provide health care to all through Medicaid expansion;

WHEREAS, for decades before the enactment of the Affordable Care Act, such quality, affordable health

coverage has been provided to workers and their families through non-profit multiemployer health plans negotiated between unions and participating employers, including the approximately 20 million individuals covered by such plans today;

WHEREAS, the health coverage provided through multiemployer plans has met the goals of the Affordable Care Act by providing portable, affordable, high-quality coverage for workers who would otherwise be left out of typical employer plans, including participants in industries where employment is mobile or part-time;

WHEREAS, multiemployer health plans have been attractive to employers because they provide predictable, consistent and cost-effective long-term health coverage for workers;

WHEREAS, multiemployer health plans have been attractive to employees because they provide a consumer-oriented plan design, portability, stability and flexibility;

WHEREAS, contrary to the law’s intent, some workers might not be able to keep their coverage and their doctors because the federal agencies’ current implementation plans will be highly disruptive to the operation of Taft-Hartley multiemployer plans, substantially changing the coverage available for millions of covered employees and their families;

WHEREAS, the federal agencies tasked with implementing the law have unnecessarily imposed an interpretation of the Affordable Care Act which imposes additional costs and fees for which plan participants receive no benefit, unnecessarily driving coverage costs higher;

WHEREAS, in industries like construction, where 93 percent of employers are considered small under the ACA, the playing field is now even more tilted in favor of companies that shirk responsibility toward their workers;

WHEREAS, current negotiation of collective bargaining agreements setting the terms of health insurance coverage for plan participants are already demonstrating the adverse impact of the application of the Affordable Care Act to multiemployer plans;

WHEREAS, the multiemployer plan community, including the AFL-CIO and other labor organizations, has engaged the Administration since the passage of the Affordable Care Act to work toward a legally supportable regulatory approach that would enable multiemployer plans to continue to provide the valuable coverage they provide today and to allow participants to keep the coverage they have;

WHEREAS, unless changes are made, the ACA will effectively use taxpayer dollars to subsidize employers that refuse to take responsibility for providing their employees health care, placing more responsible employers at a competitive disadvantage, and destabilizing the employment-based health care system. At the same time, the ACA will be taxing non-profit worker health plans for the exclusive benefit of for-profit insurance companies. Employers will then have a financial incentive to drop coverage and force low-wage workers onto the exchanges, making it nearly impossible for those workers' plans to continue. The end result will be that millions more workers and their families will be forced onto the exchanges, increasing the costs of the exchanges to the federal government and undermining the finances of the ACA;

WHEREAS, the labor movement has pushed for a requirement in the ACA that all employers assume responsibility for contributing toward the cost of health care for their employees, either by offering health benefits or by making substantial contributions to a public fund to finance coverage for uninsured workers;

WHEREAS, the ACA includes a limited employer responsibility penalty that applies just to medium and large employers, and then only for employees who work 30 or more hours per week on average, it falls short of what is needed to prevent irresponsible employer behavior. Employers are preparing to avoid paying penalties by cutting workers' hours and pay, thereby creating a new underclass of less-than-30-hour workers;

WHEREAS, we must not shift costs to working families and retirees or endanger the quality of care or limit access to care by underfunding urban, safety-net hospitals and other critical providers. ACA's payment and delivery reforms are an important step toward lowering costs, but they should be implemented in a way that protects the availability of services for our communities. And the cuts in reimbursement to hospitals and other providers should be accompanied by stronger mechanisms to ensure the maintenance of safe staffing and effective care delivery;

WHEREAS, workers should not be penalized for negotiating good health care benefits by having them subjected to special taxation—particularly so long as the tax system as a whole is tilted so severely in the direction of the very rich;

WHEREAS, denying eligibility for health benefits to immigrants on the path to citizenship is not only cruel, but also short-sighted given the important connections between coverage expansion and controlling the growth of health costs;

WHEREAS, it has been a common practice for public unions in New York and elsewhere to build a benefit structure through three different plans: 1) a comprehensive basic health plan negotiated with the employer, providing hospital, medical and related benefits; 2) a per-employee cash contribution to a union-sponsored welfare trust fund that is used to provide supplemental benefits such as prescription drugs and other health care benefits; and 3) voluntary member-paid benefits, sponsored by the union or union trust funds for insurances like umbrella policies that cover catastrophic health care claims. Under

the current construction of the ACA, each separate insurer (or plan if the benefit is self-funded) will pay the Transitional Reinsurance (TR) and Patient Centered Outcomes Research Institute (PCORI) fees. This means that these fees will be levied three times on the same group of workers. These fees should only be charged once and only to the plan sponsor of the base health plan, as is the ACA rule for single employers;

WHEREAS, the ACA Excise Tax, Reinsurance Fee and other fees will drive the costs of collectively bargained, union administered plans, and other plans that cover unionized workers, to unworkable levels, resulting in pressure to shift costs to workers, cut wages, and to agree to unacceptable high deductible plans;

WHEREAS, the federal agencies have not provided a regulatory approach that provides a positive environment for all of our plans, including multiemployer plans;

WHEREAS, this resolution is not meant to be a comprehensive list of the benefits and the problems of the ACA;

WHEREAS, because of these factors and the impact on our members, many unions have called for changes in the Affordable Care Act;

NOW, THEREFORE, BE IT RESOLVED, that the AFL-CIO reaffirms the health care resolutions adopted by the 2009 convention, including the commitment to pursue health care for all ultimately through a single-payer system;

BE IT FURTHER RESOLVED, that the ACA should be administered in a manner that preserves the high-quality health coverage multiemployer plans have provided to union families for decades and, if this is not possible, we will demand the ACA be amended by Congress;

BE IT FURTHER RESOLVED, that non-profit multiemployer plans should have access to the ACA's premium tax credits and cost-sharing reductions on behalf of working families, just as for-profit insurance companies will;

BE IT FURTHER RESOLVED, that the employer responsibility rules should be fixed by applying a full employer penalty for failing to provide affordable comprehensive coverage to workers who average 20 or more hours per week and adding an employer penalty on a pro rata basis for employees who work fewer than 20 hours per week.

BE IT FURTHER RESOLVED, that the employer responsibility rules should be fixed further by extending employer responsibility requirements to more employers, especially to construction companies with five or more employees as was provided by the Merkley Amendment included in the Patient Protection and Affordable Care Act;

BE IT FURTHER RESOLVED, that employers that attempt to shirk their responsibility in its entirety by dumping low-income workers into Medicaid should be penalized;

BE IT FURTHER RESOLVED, that the AFL-CIO will strongly oppose taxing workers' health benefits;

BE IT FURTHER RESOLVED, that the AFL-CIO supports the preservation of collectively bargained plans, union administered plans, and other plans that cover unionized workers, by eliminating the ACA Excise Tax, Reinsurance Fee and all other fees;

BE IT FURTHER RESOLVED, that we call on the federal agencies responsible for implementing the Act to exempt supplemental welfare benefit plans from the PCORI and reinsurance fees.