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Congress Considers Excise Tax Exemption for Collectively Bargained Plans in Healthcare Bill

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As the current congressional healthcare debate seemingly draws to a close, organized labor is at the heart of a potential compromise to bridge the divide between the House and Senate legislation. That compromise could, among other things, deliver a powerful organizing tool to labor unions. The House bill, passed by a vote of 220 to 215 in November 2009, would fund the legislation's $1 trillion price tag primarily through a 5.4% surtax on individuals earning more than $500,000 per year or couples earning more than $1 million per year. By contrast, the Senate bill is designed to produce revenue through a new 40% excise tax on health plans that cost more than $8,500 for individuals or $23,000 for families (the so-called "Cadillac" plans). The Senate's excise tax would impact roughly 19% of workers by 2016, and the bill's sponsors claim that it would generate $149 billion in revenue over the next 10 years. Proponents claim that the 40% tax also would encourage lower-cost health plans for employees.

Many of the nation's labor leaders have expressed significant concern over the Senate bill's 40% excise tax, believing it would disproportionately impact union members. One study suggests that an excise tax with the proposed thresholds would adversely affect one in four union members. Further, organized labor is concerned that the tax would cause employers to push higher co-payments and deductibles in order to lower the cost of their healthcare plans below the taxable threshold. Not surprisingly, the labor movement generally supports scrapping the excise tax and implementing the House bill's income tax surcharge on wealthy individuals. President Obama has, however, recently expressed some preference for the excise tax.

Top labor leaders voiced their concerns about the proposed tax for Cadillac plans to President Obama and congressional leaders earlier this week and discussed potential compromises. There are reports that a tentative agreement has been reached, and that it may include an increase in the excise tax threshold and an exemption for "collectively bargained" healthcare plans. It is unclear whether any such exemption will be permanent or temporary. A broad exemption, if adopted, could significantly favor unionized employees at the expense of unrepresented employees. It also is likely that the exemption would quickly become a powerful organizing tool for labor unions. When a new collective bargaining agreement is negotiated, the newly covered employees will reap an immediate economic benefit so long as health benefits are provided pursuant to the terms of the agreement. This would be the case even if health benefits simply continued under an employer-sponsored plan and remained identical to the coverage previously provided. Adoption of this exemption could serve to reduce some of organized labor's discontent over Congress's failure to pass the Employee Free Choice Act.

We are continuing to monitor developments in this area, and will provide updates as additional information becomes available. If you have any questions about the information contained in this

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