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MANDATING HEALTH INSURANCE: WOULD THE MASSACHUSETTS PLAN WORK FOR MARYLAND?

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Recent surveys indicate roughly 16 percent of Maryland's population has no health insurance. Only 22 states have a greater percentage of their population who lack insurance.¹ This has led to the call for new public policies to extend insurance coverage to the uninsured.

Some elected officials have looked to Massachusetts as a model for how Maryland should deal with this issue. In 2006, Massachusetts Governor Mitt Romney pushed through a plan mandating that all residents of Massachusetts have health insurance. The idea animating this bill is to require everyone to have health insurance, and then to use the funds otherwise going to pay the bills of the uninsured to provide these individuals with financial assistance and access to insurance. The plan proposes to accomplish this through the following means:

- **Individual Mandate:** State residents are required to have health insurance or face the loss of their personal exemption on state taxes.
- **Employer Mandate:** Employers are mandated to offer health insurance for all of their employees or pay a fine.
- **Connector:** The state will set up a system to help residents find insurance through a "Connector" that will help the uninsured find

insurance policies. This will theoretically lower prices by pooling the uninsured to give them group rates.

- **Subsidies for Low-Income Residents:** Subsidies will be provided by the government for residents whose income is below 300 percent of the federal poverty level.

This bold plan has received a great deal of national attention, particularly as elected officials in a variety of other states have touted this plan as a way to deal with their state's uninsured population. Some in Maryland have suggested this is the way for Maryland to proceed. In fact, in late 2006 the liberal advocacy group Health Care for All joined with the Maryland Chamber of Commerce in calling for the state to enact a mandate that Marylanders purchase health insurance. The Maryland Health Care Commission has also endorsed a similar mandate.

Caution is necessary when considering this plan, however. Maryland is *not* Massachusetts and trying to adopt this plan wholesale for the state is not likely to work. Furthermore, there are many troubling aspects of this plan that could easily overwhelm the state's budget, reduce business

1. Council for Affordable Health Insurance, "State Health Insurance Index 2006: A 50-State Comparison of the Nation's Health Insurance Market," October 26, 2006. The data referenced here was found in the methodology paper that accompanied this report.

investment in the state, and actually harm the health care choices of Marylanders.

This paper will examine the various aspects of the Massachusetts plan and show what Maryland should adopt and what it should avoid. It will also present some alternatives that should be considered by the General Assembly and Governor in order to bring more competition to the health insurance market—and thus make health insurance more affordable—in the state.

THE GOOD

Perhaps the best aspect of this proposal is that it begins to move health insurance in Massachusetts away from a third-party providing insurance to residents towards a system where individuals buy insurance and it stays with them, regardless of their job status. Moving away from employer-provided health care is a large step in the right direction in terms of controlling health care costs.

While most people are accustomed to receiving health insurance coverage through an employer, that model is outdated and should be re-examined. In fact, the only reason it became standard was an IRS determination that health benefits were not taxable, therefore giving businesses a way around World War II wage controls. As more companies took advantage of this tax loophole, employer-provided insurance became an expected part of most job benefits.

In this economy of greater economic mobility, there is little rationale for insurance to be tied to an employer. With younger workers expected to change employers an average of six times during their lives, employer-provided health insurance is a relic of the past. By encouraging portable health insurance coverage, the Massachusetts plan could help to change this.

THE BAD

Unfortunately, this move towards more portable health insurance is the only positive aspect of the plan. The rest of the plan involves heavy-handed government regulations on both individuals and businesses. If tried in Maryland, these mandates would likely drive businesses out of the state and increase unemployment. Even the “Connector” part

of the plan is problematic, as it would involve the state even more heavily in the regulation of health insurance, something that has so far only managed to make health insurance more unaffordable in Maryland.

Mandates

One of the main problems with the Massachusetts plan is that it contains mandates on both individuals and businesses. The plan requires that individuals have health insurance or face a tax penalty, while also requiring businesses of a certain size to provide employees with health insurance or pay a fine.

Individual mandate: The individual mandate is probably the most well-known aspect of the legislation, as it requires everyone living in Massachusetts to have health insurance. As a matter of enforcement, residents must comply with the individual mandate or risk losing their personal exemption on state taxes.

As Michael Tanner of the Cato Institute has shown,² an individual mandate of this sort would be very difficult to enforce. In Massachusetts, the state has mandated that everyone provide proof of insurance on his or her taxes. The problem with that mechanism is that there is no way to actually ensure that taxpayers are telling the truth outside of verifying each person’s insurance status. To enable the office of the Maryland Comptroller, responsible for collecting taxes in the state, to do this would involve a large increase in its current duties. It would also involve expanding its powers to investigate Maryland residents.

This type of enforcement also neglects the large number of people who do not file taxes. For example, in Maryland a person is not required to file taxes if he is a single person with an income less than \$8,500, the head of a household with an income of less than \$10,500, a widow or widower with an income of less than \$13,600, or married and filing taxes jointly with an income of less than \$16,900. While these limits may seem low, it should also be considered that many Marylanders without insurance are poor and would fall into these categories. Since they do not file taxes, it would be difficult to enforce an insurance mandate.

2. Michael Tanner. “Individual Mandates for Health Insurance: Slippery Slope to National Health Care,” Cato Institute Policy Analysis, April 5, 2006.

Of course, the focus on effectiveness leaves aside the essential question of whether or not a state should impose such a mandate in the first place. Until Massachusetts did so, no state had demanded its citizens purchase a specific product in order to reside in that state. This expansion of government power is often overlooked in this debate. Were Maryland to enact a similar mandate, enforcement would involve a massive government intrusion into the lives of Marylanders that is unprecedented in this state.

Business mandate: The Massachusetts plan mandates that businesses with 15 or more employees must provide health insurance to all full-time employees or pay a fine of \$295 a month. This would be particularly harmful for Maryland because of the state's reputation as already being an unfriendly state for businesses. With more business-friendly states bordering Maryland, adding another costly mandate on business may lead to companies currently operating in Maryland to move to a bordering state. According to the Tax Foundation, all the states bordering Maryland have more favorable business tax climates.³ With the addition of an employer mandate, Maryland's unfavorable business tax climate would only worsen.

If companies do not move out of state, they may choose to hire fewer workers. Most likely, the people companies will choose not to hire will be workers who have lower skill levels or less education. In fact, a study by the Employment Policy Institute concludes that employer-mandated health care costs jobs, especially for low-wage workers. As the study puts it, "the employees who will be most harmed by mandated employer-paid healthcare are disproportionately less likely to be educated, and more likely to be a minority, a single parent, and unmarried."⁴ If the goal is to increase health insurance availability, it makes little sense to enact a policy that will reduce employment opportunities

(and, by extension, employer-sponsored health care) for these people.

The nature of the penalty for businesses that do not cover workers may also be counter-productive. Some businesses, facing high health care premiums, may simply decide to stop covering their workers because it would be cheaper to pay the fine. As John Sheils, Vice President of the health care consulting company the Lewin Group, put it, "Two hundred and ninety-five dollars is a lot less than the cost of insurance."⁵

A further problem with this mandate is that it would likely lead to efforts to evade it by classifying more employees as "part time." Hawaii, the only state to have such a mandate in place, sees a large portion of its workplace classified as "part time." Of course, many of these "part time" workers could simply be working two or more "part time" jobs because businesses find it too expensive to pay for health insurance for full time employees.

And, finally, the ultimate objection to this plan is that it is probably in violation of federal law. As Maryland found out with the Wal-Mart bill court case, any state law that violates the federal Employment Retirement Income Security Act (ERISA) will be struck down. When Hawaii enacted its employer mandate, it was necessary to pass federal legislation to give it an exception. Unless similar legislation is passed for Massachusetts or any other state seeking to impose a similar mandate, this aspect of the health plan will likely fail a court challenge.

State Mandates for Participating in Insurance Connector

As described above, the state of Massachusetts will become a sort of broker for connecting health insurance providers with residents who wish to purchase insurance. While this concept has some positive aspects, it also has a fatal problem—this continues the onerous burdens already placed on insurance in the state, which increases both the cost of insurance and reduces the variety of insurance policies available.

3. Maryland ranks 22nd in the nation in terms of business tax climate, Delaware ranks 8th, Pennsylvania ranks 16th and Virginia ranks 19th. See The Tax Foundation, "How Does Your State Compare?", Table 6, 2006

4. Katherine Baiker and Helen Levy, "Employer Health Insurance Mandates and the Risk of Unemployment," http://www.epionline.org/study_detail.cfm?sid=82, accessed January 5, 2006.

5. Marilyn Werber Serafini, "The Mass.ter Plan," *National Journal*, June 10, 2006, p. 5.

While the requirements that only state-approved insurance can be sold ostensibly ensures that only quality health insurance is available to Massachusetts residents, it actually ends up hurting consumers in the state. Massachusetts (like Maryland) already puts a variety of restrictions on what types of insurance can be sold. For example, in Maryland all individual and small business insurance policies must cover a variety of medical procedures (such as *in vitro* fertilization), regardless of whether the insured person desires such coverage. Furthermore, co-payments and deductibles are set by the state, giving consumers no ability to choose plans that meet their individual needs. In both states this has harmed consumers by driving up the costs for insurance and reducing the ability of insurance companies to offer insurance plans tailored to the different needs of consumers in the state.

This type of “government knows best” thinking will ensure that the Connector will not truly help meet the insurance needs of Massachusetts residents. If reforms simply help people find insurance with a Connector but do not address the fundamental reasons health insurance is unaffordable, they will do no good. In Maryland’s small group market (which covers small business health insurance plans), two companies provide 92 percent of the policies.⁶ Government mandates and regulations have driven other companies out of the state and left consumers with few choices.

People should have the freedom to choose what type of insurance will best meet their needs. They should not have government bureaucrats dictating what procedures should be covered or how much their co-payment and deductibles should cost, both of which are mandated by the Massachusetts (and Maryland) government. Insurance providers should be free to respond to the differing needs and desires of the state’s residents, but they will be unlikely to do so under the heavy-handed approval process that will come with participating in the Connector.

WHAT SHOULD MARYLAND DO ABOUT THE UNINSURED?

If not the Massachusetts plan, what should Maryland do about the uninsured? After all, the

conventional wisdom is that the 16 percent of Maryland’s population without health insurance cost the state’s taxpayers millions of dollars and suffer from poor health because they have no access to health care.

The first thing that needs to be considered in this debate is the exact nature of the 16 percent of Marylanders without insurance. Contrary to common perception, this group is not uniformly poor. According to the Kaiser Family Foundation, 61 percent of Marylanders without health insurance have incomes above the federal poverty level. Forty percent have incomes that exceed the federal poverty level by at least 200 percent.

Not only does the number of uninsured include many people who are not poor, it also includes a number of people who only lack insurance for part of the year. According to a 2003 Congressional Budget Office study, “the uninsured population is fluid, with many people gaining and losing coverage. For example, between half and two-thirds of the people who experienced a period of time without insurance in 1998 had coverage for other portions of the year.”⁷ There has been no similar study specifically discussing the fluidity of Maryland’s uninsured, but we can assume they roughly follow the national trend.

As can be seen from these numbers, the majority of Maryland’s uninsured are not in poverty and they do not lack health insurance for an extended period of time. Any laws that attempt to address the “problem” of the uninsured must be designed with these facts in mind. There are three separate groups that make up the uninsured—low-income Marylanders who cannot afford insurance, higher-income Marylanders who do not purchase insurance, and Marylanders who lose insurance for part of the year—and they all have separate needs.

What, then, should be done to help these people?

Make insurance more affordable. According to the Council on Affordable Health Insurance, the average annual premiums for Maryland health insurance are among the highest in the nation.⁸ Maryland currently imposes a variety of government mandates on insurance that both increases the

6. Noted in the Maryland Health Care Commission’s presentation, “Health Policy Briefing Regarding Work in Progress,” November 16, 2006, p. 5.

7. Congressional Budget Office, “How Many People Lack Health Insurance and for How Long,” May 2003.

price and makes it less attractive to certain segments of the population. Reducing these regulations would both lower the cost of insurance in Maryland as well as allow insurance companies to adapt policies to meet the diverse needs of Maryland consumers.

Some of the most onerous burdens on health insurance in Maryland have been imposed by the state legislature in the form of mandated services that insurance policies must offer. For example, insurance must cover such things as marriage counseling, *in vitro* fertilization, and treatment for Chlamydia. While such coverage may be useful to certain segments of the population, forcing everyone in the state to buy insurance with such coverage only raises its price. Other expensive burdens are imposed by the Maryland Health Care Commission, which regulates insurance policies.

Our elected officials recognized this in 2003 when they passed legislation allowing individuals to purchase a more affordable insurance policy that was exempt from many state-imposed mandates. While this was a good first step, it did not go far enough. The state should remove some of the mandates on coverage as well as give insurance companies more freedom to design insurance policies that offer a variety of services at a variety of prices. Without this freedom, insurance prices will continue to rise.

Encourage insurance portability. As mentioned before, up to two-thirds of the uninsured are only uninsured for part of the year. One of the major causes of this is that health insurance for most people is tied to their jobs. That means that workers changing jobs experience a gap in coverage, even if only for a month or two. While these are counted in the ranks of the “uninsured,” they are really only experiencing a gap in insurance coverage. Furthermore, as mentioned above, in today’s mobile job market, this situation is much more common than in the past. Moving away from having health insurance tied to a person’s place of employment would address this problem.

While states can reduce regulations to make health insurance more affordable, state options to increase health insurance portability are more limited. Making health insurance more portable would require fundamental changes in both the federal and state tax codes. There are a few things, however, that can be done by the state that will help those who wish to move away from employer-sponsored health care.

The first, as described above, is to make health insurance more affordable, especially individual health insurance policies. The state should eliminate all mandates on individual policies and let insurance companies develop a variety of policies to meet the needs of Marylanders who wish to purchase insurance on their own. The state could also help by making the purchase of these policies tax deductible.

Another reform that should be encouraged is the use of Health Savings Accounts (HSAs). These were expanded in 2003 as part of the Medicare Modernization legislation, and they allow someone who purchases health insurance for catastrophic events to save money tax-free in health savings accounts that can then be used to pay for routine medical expenses. These HSAs are portable and workers are free to take HSA funds with them when they change jobs.

CONCLUSION

Enacting these reforms to make health insurance more affordable would go a long way toward reducing the number of uninsured. Unfortunately, a move towards greater consumer control over medical spending seems to be the opposite direction from the one supported by elected officials in the state. Proposals floated during the election that would increase governmental involvement in health care in the state will only exacerbate the problems that Maryland is facing.

Maryland’s health insurance market is heavily regulated, and the number of uninsured in the state is due in part to this heavy regulation. Instead of pursuing legislation based on the Massachusetts plan, Maryland policymakers should free the

8. On October 26, 2006, the Council for Affordable Health Insurance released a report entitled “State Health Insurance Index 2006: A 50-State Comparison of the Nation’s Health Insurance Market.” In the methodology paper accompanying this report, it noted that Maryland’s average annual premium for individual policies is \$3,279 and for small group policies it is \$3,703. There are only five states with higher individual premiums and 16 states with higher small group premiums. Available at <http://www.cahi.org/article.asp?id=825>, accessed on November 6, 2006.

insurance market from governmental micromanagement and let insurance companies develop policies to meet the differing needs of citizens within the state. Imposing more mandates and increasing governmental interference in the

market would hurt Maryland without doing much to help those who lack insurance.

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