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Massachusetts Health Care Reforms: The Wrong Path for Texas

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When then-governor Mitt Romney signed Massachusetts' health care legislation into law it promised to provide universal health care coverage for the entire state while simultaneously reducing health care costs, but two years and a new governor later, it has accomplished neither.

The reform is centered around the establishment of the Commonwealth Health Insurance Connector Authority a new, quasi-public regulatory branch, which oversees the purchase of private insurance plans by individuals and small businesses. The connector combines the individual and small group markets creating an economy of scale that should, in theory, lower individual costs by spreading risk over a broader population.

Additionally, the connector facilitates the Commonwealth Care program, the state's health care program for individuals below 300 percent of the poverty level ($31,212 for individuals and $63,612 for a family of four), who do not qualify for Medicare or Medicaid. Individuals making at or above 150 percent of the federal poverty level ($15,612 for an individual and $31,812 for a family of four) receive sliding-scale subsidies to purchase private health insurance plans offered through the Connector. The amount of the subsidy is determined by the Connector's board of directors and based on personal income. Those who earn less than 150 percent of the federal poverty level pay no premiums, have no deductibles and receive complimentary dental insurance.

The reform also incorporates an individual mandate that requires every person in the state to have health insurance, prohibits individuals from self-insuring, and enforces financial penalties for failing to obtain health care coverage. For 2007, the amount of an individual's state income tax exemption was withheld and applied toward the Commonwealth Care Trust Fund to finance the connector and the Commonwealth Care Program. In 2008, penalties will increase by monthly increments, and can be up to half the cost of an individual's health insurance plan.

The reform also enforces an employer "pay-or-play" mandate, requiring employers with 10 or more employees, to provide a "fair and reasonable contribution" toward their employees' health insurance premiums. The "fair and reasonable" standard is interpreted and enforced by the board that directs the Connector, is subject to change according to the cost of health insurance premiums and is re-evaluated every year. Employers who do not pay an adequate amount of their employees health insurance premiums are assessed an annual fine that helps fund the Commonwealth Care Trust Fund and other state health care initiatives.

LIMITED CHOICES

Insurance companies forced to offer costly health plans and/or be shut out of the connector market, are hesitant to operate in the state, leaving Massachusetts residents with very few choices in health insurance.

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The policies offered through the Connector must meet the requirements set by the individual mandate, the standards of "high quality," "good value," and "affordability," are determined by the Connector's board, and they have approved plans from six companies who now represent 90 percent of the health insurance market in the state.[1] These health plans make up what is known as Commonwealth Choice, an offering of private, unsubsidized health insurance policies that can be purchased with pre-tax income by any individual. Essentially, Commonwealth Choice gives individuals 24 different health insurance options, each of the six approved health insurance carriers offer four levels of coverage with varying levels of cost sharing and benefits.

According to a report from the State of Massachusetts, approximately 340,000 have gained insurance since the onset of the health care reforms, but over three-fourths of those newly insured have been added to the state's health care tab and are receiving some amount of subsidy to help pay for their "affordable" insurance.[2] A recent study reported that 160,000 of the new families enrolled earn less than $63,600 and receive taxpayer-subsidized plans, with more than half of them paying no premiums and most others making only a small contribution.[3]

The Cadillac-style plans promoted by the Connector are full of mandated benefits that make the policies more expensive. Research from Consumers for Health Care Choices found that coverage in Boston for a 50-year-old male non-smoker using the Connector ranged from $300 a month for a policy with a $2,000 deductible and $909 a month for a zero deductible plan.[4] Similar policies in neighboring Connecticut cost $122 a month for a $2,500 deductible and $401 a month for a plan with a $250 deductible. This price difference is a result of the requirements that plans offered through the connector must adhere to in order to be approved as a "good value" for consumers. Although the plans meet the Connector's arbitrary definition of affordable, the majority of people taking up insurance are doing so with the assistance of subsidies and not as a result of inexpensive health insurance policies that they are able to afford.

This year premiums in Massachusetts rose by 12 percent, almost double the national increase of 6.5 percent, yet state regulations forbid individuals from purchasing health insurance from other states, even if the policies offered there are more affordable.[5] The Kaiser Family Foundation has reported that in response to the rising cost of premiums, the Commonwealth Connector has updated its standard for affordable, increasing the allowable cost by almost 10 percent.[6]

Additional requirements limiting out-of-pocket expenses and restricting high deductible health plans have eliminated affordable alternatives to more expensive, traditional plans. Regulations that "cap deductibles at $2,000 for individuals and $4,000 for families and limit out of pocket spending to $5,000 for individuals and $10,000 for families"[7] make health savings accounts and other high deductible health plans almost obsolete.

MANDATING HEALTH INSURANCE

Across the board, individual mandates have proven to be an ineffective way of increasing enrollment or forcing people to abide by stringent requirements. Despite 48 states requiring everyone who owns a vehicle to have automobile insurance, nearly 15 percent of motorists still drive without insurance[8] and in Texas, where it is illegal to not have auto insurance, 20 percent of the drivers on the road do not have insurance.[9] The Massachusetts individual mandate for health insurance has proven equally inefficient, leaving half of those uninsured at the onset of the program still without health insurance.[10]

The results of the employer mandate have been unsuccessful as well. Contributions from the employer mandate were expected to add $45 million to the program and instead, it generated only $5 million, contributing to the program's overall budget shortfall. And although Massachusetts employers are more likely to offer coverage than employers nationwide, the Division of Health Care Finance and Policy discovered that Massachusetts employees are less likely to enroll, in fact the number of employees taking up their employers insurance is down from 85 percent in 2003 to 78 percent in 2007.

Additionally, most people agree that the employer "play-or-pay" mandate violates the Employee Retirement Income Security Act (ERISA). ERISA gives the federal government authority to regulate employer-sponsored health

insurance for large employers, allowing them to self-insure and "prohibit[ing] states from regulating employer-sponsored plans,"[11] however the mandate in Massachusetts forces all employers to abide by state regulations when contributing to health benefits for their employees.

In 1974, Hawaii received a congressional exemption from this ERISA requirement, allowing the state to require all businesses to provide health insurance for their workers. To date, Hawaii is the only state that has received a federal exemption from the ERISA Law,[12] but it is not the only state enforcing an employer mandate. Other states implementing similar laws without Congressional approval could be overturned if taken to court.[13] Even today, Hawaii has not achieved complete coverage of its population. Massachusetts employers have not taken the issue to court and many people doubt they will under the current scenario, although many believe their challenge would be successful.

The Massachusetts Division of Health Care Finance and Policy (DHCFP) reports that the number of people with health insurance has grown by 256,000, but contrary to that number the uninsured population has only decreased by 40,000.[14] Although there have been several different estimates on the actual number of uninsured in Massachusetts, the DHCFP suggests only a nominal change in the percentage of the population that is uninsured. According to data the department presented in testimony, the uninsured rate only fell .7 percent from 2006 to 2007. Additionally, 20 percent of the population (around 60,000) has been exempt from the requirement that everyone in the state have health insurance.

The expansive welfare program, Commonwealth Care cost approximately $625 million in 2007, $155 million dollars more than proposed in the original plan. Now, Governor Deval Patrick has estimated that in the coming fiscal year the program will cost "$869 million, but those overseeing the law have already acknowledged that costs will rise even higher."[15] The original costs for the welfare program combined with establishing the Connector were projected to cost the state $1.6 billion in 2007. However, it far exceeded that cost and state policy makers are now poised to invest $2.6 billion in health care reform efforts in 2009.[16]

In an effort to combat the escalating costs, Massachusetts is looking to increase the state's tobacco tax by $1 per pack, bringing the total tobacco tax to $2.51. If passed, the increase would give Massachusetts one of the highest tobacco taxes in the country. According to the Kaiser Family Foundation, the increased tax is expected to generate $175 million in revenue to help fund the state's health plan. However, the estimated $175 million would barely cover the deficit of the program in 2007 and studies have found that three-fourths of tobacco tax increases raise less than projected[17] and as a result are not a reliable source for raising revenue, but more effectively serve as a deterrent for smokers. Some states have seen as much as a 36 percent drop in cigarette sales after increasing tobacco taxes, reducing the revenue generated from the new tax.

RECOMMENDATIONS

Despite the Massachusetts plan's inability to deliver on its promise of universal coverage and its blatant failure at reigning in health care costs, Texas lawmakers have signaled an interest in mimicking aspects of the plan. The possibility of everything from an individual mandate to a connector-like program has been discussed as potential reforms for Texas, but the astronomical cost of implementing these programs in Texas would likely make such a move prohibitive and as Massachusetts has seen would still leave us short of 100 percent coverage.

The policy interest in the individual mandate and the addition of another regulatory government body by way of a Connector signal a shift to increasing government involvement and poor fiscal policy. Going the way of Massachusetts, who projects a $1.2 billion budget shortfall,[18] is a poor solution for Texas.

Instead, policymakers should allow competition to stimulate a vibrant individual market where health insurance prices reflect their actual value to the consumer. The first step to creating a viable health insurance market is to eliminate the draconian-style mandates that require health insurance policies to cover benefits that not all consumers view as valuable investments.

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Additional state regulations that prohibit purchasing health insurance regulated by other states make captive consumers out of Texas customers. Expanding the insurance market in Texas to include health insurance policies designed around other states' regulations would create an opportunity for more competition and would encourage regulatory powers in the state to repeal many of the mandated benefits that have made Texas insurance premiums the third highest in the country.

Rather than follow in the footsteps of Massachusetts, Texas has an opportunity to take a bold, new approach to solving the health care dilemma facing the country. We can lead the way in innovative health care reform by harnessing the market forces of competition and empowering consumers with a wide range of choices. ☆

ENDNOTES

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