

## Massachusetts Universal Health Insurance Takes Bold New Step

By Susan E. Cancelosi, J.D., LL.M.

[secancel@central.uh.edu](mailto:secancel@central.uh.edu)

Massachusetts in early April 2006 became the first state in the United States to require every individual in the state to maintain health insurance, making headlines across the country and reflecting intensifying state efforts to find creative local solutions to the problems of their uninsured residents. Chapter 58 of the Massachusetts Acts of 2006, “An Act Providing Access to Affordable, Quality, Accountable Health Care” (the “Act”)<sup>1</sup> represented a remarkable compromise between the state’s Republican governor, heavily Democratic legislature, private industry, and consumer advocacy groups.<sup>2</sup> “An achievement like this comes around once in a generation, and it proves that government can work when people of both parties reach across the aisle for the common good,” Governor Mitt Romney said.<sup>3</sup> The Massachusetts House of Representatives approved the bill with a 154-2 vote, and the state Senate approved it with a 37-0 vote.<sup>4</sup> Governor Mitt Romney signed the Act into law barely more than a week later.

The new Massachusetts statute adapts the model of car insurance and applies it to health insurance, but with a unique public/private partnership twist. Under the new law, every individual in the state must purchase health insurance by July 1, 2007. The state estimates that approximately 500,000 individuals in Massachusetts currently do not have any form of health insurance.<sup>5</sup> These individuals – the target of the new law – will all receive some form of direct or indirect state assistance to help them satisfy the requirements of the Act. Approximately 100,000 are eligible for Medicaid; another 200,000 with incomes below 300% of federal poverty level (but above Medicaid eligibility limits) will receive sliding-scale premium assistance and will be eligible for no-deductible policies; and the remaining 200,000 (those with higher incomes) will be eligible for special private market low-cost policies.<sup>6</sup> After 2007, the Act will begin imposing penalties on individuals who do not maintain health insurance in accordance with the statute.

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<sup>1</sup> 2006 Mass. Acts Ch. 58, available at <http://www.mass.gov/legis/laws/seslaw06/sl060058.htm> (last visited May 8, 2006).

<sup>2</sup> See, e.g., Scott Helman, *Mass. Bill Requires Health Insurance*, BOSTON GLOBE, Apr. 4, 2006, at A1, available at [http://www.boston.com/news/local/articles/2006/04/04/mass\\_bill\\_requires\\_health\\_insurance?mode=PF](http://www.boston.com/news/local/articles/2006/04/04/mass_bill_requires_health_insurance?mode=PF) (last visited May 8, 2006). See also Pam Belluck, *Massachusetts Sets Health Plan for Nearly All*, N.Y. TIMES, Apr. 5, 2006, at A1, and Pam Belluck, *On Health Care, Massachusetts Leaders Invoke Action, Not Talk*, N.Y. TIMES, Apr. 6, 2006, at A16.

<sup>3</sup> Commonwealth of Massachusetts Executive Department, *Press Release: Romney Signs Landmark Health Insurance Reform Bill* (Apr. 12, 2006) available at [http://www.mass.gov/?pageID=pressreleases&agId=Agov2&prModName=gov2pressrelease&prFile=gov\\_pr\\_060412\\_Healthcare\\_signing.xml](http://www.mass.gov/?pageID=pressreleases&agId=Agov2&prModName=gov2pressrelease&prFile=gov_pr_060412_Healthcare_signing.xml) (last visited May 8, 2006).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

State dollars previously directed at coverage for the uninsured will be used to support the program, and the state is pursuing an amendment to its existing Section 1115 Medicaid waiver that will allow it to use federal Medicaid reimbursements to support the program.<sup>7</sup> In fact, part of the impetus for Massachusetts' efforts to enact this legislation was a threat in September 2005 from the Centers for Medicare & Medicaid Services ("CMS"), which oversees the federal Medicaid program, that it would withhold as much as \$385 million in federal Medicaid funds from Massachusetts for each of the next two fiscal years unless the state took action to reduce its numbers of uninsured individuals.<sup>8</sup> CMS gave the state a deadline of January 15, 2006, to propose a plan that would resolve CMS' concerns.<sup>9</sup> The state missed the deadline because the Act was not signed into law until April, but appears comfortable that CMS will approve the new plan and continue federal funding.<sup>10</sup> With help from the Medicaid waiver, the state not merely provides benefits to those previously eligible for Medicaid, but also leverages the federal Medicaid dollars to support the broader goal of insurance for all of the state's uninsured.

One possible drawback of the Act, however, lies in some of the details yet to be resolved. The success of the Act depends on the existence of low-cost private health insurance policies, but exactly what constitutes "low cost" for this purpose remains as yet undetermined.<sup>11</sup> Moreover, health insurance policies are generally subject to Massachusetts' mandated insurance benefits rules, which establish minimum coverage that must be offered.<sup>12</sup> Whether changes will be made to these rules – either to carve out exceptions for low-cost policies under the Act or to increase requirements – is as yet unknown although apparently Massachusetts' legislators have indicated that they will not impose new requirements until at least 2008.<sup>13</sup>

An additional feature of the Act has prompted conflict despite the otherwise broad support for the new statute. When the Act went to Governor Romney for his signature, he vetoed a provision in the bills passed by the Massachusetts House and Senate that would have imposed a \$295 per employee tax on any employer with 11 or more full-time employees if that employer fails to offer and contribute to health insurance for its employees.<sup>14</sup> This tax is similar to the "pay or play" legislation under consideration in other states. Governor Romney argued that the employer tax was "not necessary to implement or finance health care reform."<sup>15</sup> By the end of the month, both the House and Senate had overridden the veto, reinstating the provision.

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<sup>7</sup> *Id.* See also COMMONWEALTH OF MASSACHUSETTS EXEC. OFFICE OF HEALTH AND HUMAN SERVICES OFFICE OF MEDICAID, MASSHEALTH SECTION 1115 WAIVER AMENDMENT (May 1, 2006), available at [http://www.mass.gov/Eeohhs2/docs/eohhs/cms\\_waiver\\_2006/amendment.pdf](http://www.mass.gov/Eeohhs2/docs/eohhs/cms_waiver_2006/amendment.pdf) (last visited May 8, 2006).

<sup>8</sup> Scott Helman, *US Threatens Cutoff of \$385M for Medicaid*, BOSTON GLOBE, Oct. 4, 2005, at B1.

<sup>9</sup> *Id.* See also Commonwealth of Massachusetts Executive Department, *Press Release: Implementation of Health Care Law Proceeds* (May 1, 2006) available at [http://www.mass.gov/?pageID=pressreleases&agId=Agov2&prModName=gov2pressrelease&prFile=gov\\_pr\\_060501\\_healthcare\\_waiver.xml](http://www.mass.gov/?pageID=pressreleases&agId=Agov2&prModName=gov2pressrelease&prFile=gov_pr_060501_healthcare_waiver.xml) (last visited May 8, 2006).

<sup>10</sup> *Id.*

<sup>11</sup> See Reed Abelson, *Bold Goal Confronts Fine Print*, N.Y. TIMES, Apr. 7, 2006, at C1.

<sup>12</sup> See generally MASS. GEN. LAWS ch. 175, § 47 *et seq.* (2006).

<sup>13</sup> See Abelson, *supra* note 11.

<sup>14</sup> *Romney Signs Landmark Health Insurance Reform Bill*, *supra* note 3.

<sup>15</sup> *Id.*

Massachusetts is not the first state to attack the problem of the uninsured. For example, both Hawaii and Maine have statutes in place that strive to make health insurance available to virtually all residents of those states, neither has succeeded in accomplishing universal coverage. Hawaii has mandated employer health insurance coverage since 1974,<sup>16</sup> with a special exemption from the preemption provisions of the federal Employee Retirement Income Security Act (which ordinarily bars state regulation of most employee benefit plans). The Maine statute, which went into effect in January 2005, focuses primarily on assisting small businesses in offering coverage and on providing premium support for low-income individuals.<sup>17</sup>

What makes the Massachusetts statute unique is its direct imposition of a legal requirement on individuals to purchase health insurance. To the extent that individuals – with or without government premium support – can now purchase reasonably priced coverage where they had none, this seems clearly a step forward. On the other hand, there is always the risk that “you get what you pay for,” and the lower-cost coverage that many individuals may purchase may prove to offer far less generous benefits than people expect – and need. Still, Massachusetts must be given credit for a bold attempt to cover its uninsured residents, certainly more than most states have accomplished.

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<sup>16</sup> HAW. REV. STAT. §393 *et seq.* (2006).

<sup>17</sup> 2003 Me. Laws ch. 469, available at <http://mainegov-images.informe.org/governor/baldacci/healthpolicy/DH-Passed-Signed.pdf> (last visited May 8, 2006).