Universal Health Coverage California Style: Lessons for Texas?

By Bruce Patsner, M.D., J.D.

It’s often the case that wherever California goes, the rest of the United States follows. California’s experience with managed care (Kaiser Permanente) starting during World War II was the first-large scale effort in the country to define healthcare cost-containment and benefits for an employer-based health insurance plan. Kaiser is still the largest managed care organization in the United States. In the late 1970s, California’s effort at medical malpractice reform with MICRA was the first major attempt at capping monetary damages and is still considered by some to be model for state efforts to address this perennial issue. If California is going to take the rest of the U.S. down the road to universal health coverage in 2008, all signs suggest it’s going to be an interesting journey. Massachusetts may have taken the lead in 2006 by passing a universal healthcare coverage plan for its citizens, but whatever California does will likely have greater impact on states outside of the Northeast because of its size and influence.

That universal health coverage is a major issue for every individual state, and the entire nation, is probably the only thing everyone can agree on. Individual state efforts to address the problem of the uninsured are gaining national attention both because a Presidential election is looming and because of recent action on the federal front, as witnessed by President Bush’s recent efforts at fiscal constraint at the expense of proposed expanded health coverage for uninsured children.

As the most populous state in the nation, California’s problem with the uninsured is particularly pressing. California had 6.8 million uninsured during 2006, more than any other state in the nation, and one in six of all Americans without health insurance live in California. Almost twenty percent of California state residents are currently without health insurance, and more than 60 state emergency rooms have closed in the past decade because of the costs of caring for the uninsured. On the other hand, not everyone without health insurance in California is either indigent or lacks access to healthcare insurance: more than one-third of the uninsured in California have family incomes of more than $50,000 per year, and nearly 70% of uninsured children are in families where the head of

2 Medical Injury Compensation Reform Act, California Civil Code § 3333.2 (1975).
5 California HealthCare Foundation, The Uninsured, available at http://www.calhealthreform.org/content/view/30/48 (last accessed November 27, 2007) [hereafter abbreviated as CHF: The Uninsured].
6 In absolute numbers California has more uninsured adults than any other state. As a percentage of overall state population though, Texas currently has the number one position.
7 CHF: The Uninsured, supra, note 5.
the household has a full-time job. This strongly suggests that the lack of healthcare insurance problem is a problem for the middle class, not just the indigent.

Any state contemplating universal healthcare coverage must face several difficult truths in several different areas:

Payment
● Healthcare coverage in the U.S. has been a combination of government programs and employer-based coverage for more than half a century, and any successful plan at comprehensive coverage will have to embrace this paradigm for the foreseeable future.
● Even if everyone agrees on who is going to be covered and how much coverage is going to be offered, dividing up the costs of paying for it among the government, employer, employee, and healthcare provider side is going to guarantee that there will be relative winners and losers.
● Reimbursement rates for indigent care are too low to provide an incentive for doctors and hospitals to want to care for these people.

Coverage
● Some people, whether working or not, are too poor to buy health insurance, not poor enough to qualify for Medicaid, and not yet old enough to qualify for Medicare.
● Some employees (particularly younger or unmarried) who could buy coverage from their employers don’t because they are healthy and don’t feel like they need it or because they would rather spend the money on things other than health insurance premiums.
● Some employers don’t offer health coverage to their employees or are actively looking to minimize such costs.
● If having health insurance is not a mandated requirement there will be “free-riders” whose care costs ultimately are born by all taxpayers.

Cost Control
● Coverage of preventive care could possibly reduce costs in the long run by reducing the incidence of chronic illness.
● Even if everyone were covered by a universal healthcare plan with a financial structure everyone could agree on, the plan will fail if no effort is made to control expenditures for new medical technologies.

These truths necessitate that any state plan must pay more than lip service to almost two dozen focus areas. These include which citizens will be covered; the issue of requirements imposed on consumers, the self-employed, employers, and healthcare providers; changes in funding and expansion of existing programs for low-income individuals; insurance reform; the role of counties as well as the federal government; changes in the state tax code; efforts at cost-containment and preventive care; enforcement of new healthcare reform provisions; and the timeline for implementation of any reforms. To their credit, both Governor Schwarzenegger and the Democratic

8 _Id._
California State Legislature attempt to address most or all of these issues in their respective plans.

The Major California Proposals – Areas of Agreement and Disagreement

The current fight in California is shaping up as a classic battle over what will be covered, who will be covered, and how it’s going to be paid for. Adding fuel to the fire is the relative power organized labor unions have in California compared to other states and the fact that, at least as far as private industry is concerned, long-term health care costs for workers in the past decade have eaten the automobile industry alive.¹⁰

There are currently no fewer than five major coverage expansion proposals for universal healthcare in California, but the primary proposals are Governor Schwarzenegger’s, one by the more conservative Republicans, and the most recent one from the Democratic-controlled Legislature. Governor Schwarzenegger proposed his own multi-faceted program for addressing the problem of the uninsured in October after he vetoed the healthcare plan passed by the predominately-Democratic California Legislature on September 10, 2007.

The Governor’s plan differs from the Legislature’s proposal in several key areas, but significantly it is much more similar to Democratic proposals than to the either of the two plans introduced by Republicans. Both Republican plans contemplate more regulatory reform rather than any expansion of coverage.¹¹ Governor Schwarzenegger’s plan is ambitious in both its scope and equanimity, and at the very least confronts all of the hard truths about universal health coverage head-on. And, in a gesture that may bode well for the otherwise deeply divided politic in the U.S., the Governor breaks ranks with his own party and embraces many of the coverage principals Democratic lawmakers have been talking about for years.

In Governor Schwarzenegger’s plan, the money is going to come from the state, from employers, and from health professionals.¹² In contrast to the Massachusetts plan, which attempts to finance its universal healthcare plan in part with a nominal $295 per employee “charge” on employers who do not offer health insurance, the Governor’s plan contemplates a 4% tax on payroll.¹³ For the non-Medicaid indigent or unemployed there are state subsidies for coverage. Eligibility for some federal government programs will be increased.¹⁴ Reimbursement for doctors would increase in an effort to make caring for Medi-Cal patients less onerous, but there would also be a fee levied on healthcare providers, including hospitals. Not surprisingly, the doctors are unhappy.

¹² Id.
¹³ HMS Public Forum on the Uninsured, supra. Note 3.
¹⁴ CalHealthReform, Comparison of California Health Coverage Expansion Proposals, supra.
Interestingly, the Governor’s plan to expand access to federal subsidy programs differs only in degree, not principle, from that of some Democratic Presidential front-runners. More than any other competing plan in the mix, the Governor’s plan attempts to address cost containment, and introduces for the first time “pay for performance” concepts as a way to control escalating healthcare costs. The Governor’s plan even out-does that of Massachusetts in providing a “blueprint for health” highlighting certain public health problems as obesity as a collective problem for all citizens, employers, and the state.

The highlights of the major proposals and their sponsors are illustrated below.

<table>
<thead>
<tr>
<th>Governor Schwarzenegger</th>
<th>Democrats Nunez/Perata (Vetoed 10/12/07)</th>
<th>Assembly Republicans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated 4.1 million</td>
<td>Estimated 3.4 million</td>
<td>No estimates</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Mandated. Minimum to be determined by HHS Secretary</td>
<td>Mandated. Will depend on what employer does</td>
<td>None</td>
</tr>
<tr>
<td>Pay or Play Approach</td>
<td>Pay or Play Approach</td>
<td>None</td>
</tr>
<tr>
<td>Plan to be financed in part by fee from hospitals equal to 4% of patient revenues</td>
<td>Plan to be financed in part by fee from hospitals equal to 4% of patient revenues</td>
<td>None stated</td>
</tr>
<tr>
<td>Rate increase. May be linked to pay for performance</td>
<td>None stated</td>
<td>None stated</td>
</tr>
<tr>
<td>Same individual mandate applies</td>
<td>More coverage via insurance reform</td>
<td>Tax-free deposits in Health Savings Accounts</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No expansion</td>
</tr>
</tbody>
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Californians to be Covered
Expansion of Coverage?
Requirements Imposed on Consumers
Requirements Imposed on Employers
Requirements Imposed on Providers
Changes in Provider Payments
Treatment of self-employed
Public Program Expansion?

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15 Inglehart, supra. Senator Hillary Clinton has proposed raising SCHIP eligibility to four times the federal poverty level.
16 CalHealthReform, Comparison of California Health Coverage Expansion Proposals, supra, Note 11.
17 Id.
Deciding whether having health insurance is to be an option or a requirement is the other big issue aside from financing reform. This issue is not just a problem for California, as the current debate over “mandates and mudslinging”\(^\text{18}\) illustrates. That there is actual disagreement over whether to require insurance is ironic, since clearly part of the reason the current system is broken is because some uninsured (no one knows the exact percentage) can afford health insurance but choose not to purchase it. In the process these individuals make insurance substantially more expensive for everyone else. Under Governor Schwarzenegger’s plan there would be mandates for purchasing health insurance for citizens\(^\text{19}\) as well as a mandate requiring employers to provide insurance or pay into a universal fund.\(^\text{20}\) The Governor’s plan thus ensures that there are no free-riders on either side of the equation.

### Is Compromise Possible, and What Might It Look Like?

Neither Governor Schwarzenegger’s proposal nor the competing Democratic Legislative proposals will likely make it into law intact. The Republican “free market” proposals mirror much of the status quo. The choices will likely boil down to either no reform at all or some compromise. How this will play out is unclear, but the lesson for every state, regardless of its demographics, is that both Democrats and Republicans are going to have to work together if the problem of the uninsured is going to be solved. The issue is simply too big for either party, and too pressing and important for politics as usual. As far as what will survive the negotiating process between the Governor and the Legislature, that too is unknown. Any one of a number of proposals in either plan could be negotiable: efforts at cost-containment, whether employers who do not offer insurance will pay a fixed amount per employee as a penalty rather than a percentage, or even whether to use the carrot and stick approach to the medical profession.

Texas, Massachusetts, and California all have different rates of uninsured (25%, 6%, and 20% of the population respectively), and Massachusetts has a higher percentage of people


\(^{20}\) Id.
who are already covered by employer-sponsored insurance than either state.\textsuperscript{21} So, what works for one state may not for others. States with enormous numbers of uninsured, and less of a potential employer-based safety net (such as Texas and California), may have less flexibility in avoiding direct state subsidies for some of the uninsured. The lesson for Texas may have more to do with the process – bipartisanship - and the will to mandate that all residents have health insurance or face a fine\textsuperscript{22} - than with anything else.

\textsuperscript{21} HMS Public Forum on the Uninsured, \textit{supra}, Note 3.
\textsuperscript{22} \textit{Id.}