



What National Health Care Reform Means to New Jersey

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On November 7, 2009, the U.S. House of Representatives passed the America's Affordable Health Choices Act (hereinafter "the Act."). Among other things, this enormous bill it seeks to expand health care coverage to the approximately 40 million Americans who are currently uninsured by lowering the cost of health care and making the system more efficient. To that end, it includes a new government-run insurance plan (the public option) to compete with the private companies, a requirement that all Americans have health insurance, and a prohibition on denying coverage because of pre-existing conditions.

While the focus has now moved to the U.S. Senate, it is clear that there is basic agreement on consumer protection. If enacted, it is likely that the law will provide a basic benefits package that will cover prevention and wellness, which many employers already offer. Carriers will not be able to discriminate based on a pre-existing condition and will not be able to cancel policies when people get sick. Out of pocket expenses will be capped and life time limits will be eliminated. And for the first time, nearly every American will be required to have health insurance.

An insurance exchange will be created, thus creating a pool of consumers who are expected to leverage the group buying power. Private carriers will sell within the exchange, which will be regulated either statewide or nationally. It is likely that some modest form of "public" or nonprofit option will be available but limited to people who can not obtain insurance through an employer, Medicare or Medicaid. Small business may have this option available to them as well, capped at about 5% of the overall consumer market.

People who cannot afford to buy insurance will receive a subsidy. Employers who do not offer insurance to their employees will contribute to the subsidy either directly or indirectly, with exemptions for small business. There are approximately 1,253,000 uninsured people in the state. About 16% are already eligible for Medicaid, the state-federal program that covers the poor. More than a third of the remaining uninsured are undocumented workers. This leaves about 561,000 adult citizens and 53,000 children who are left uninsured.

If there is a public plan in the Senate bill, the states may have the option to opt out or it may be triggered by a later date.

New Jersey is a small business state. About 95% of the state's businesses, or 249,448 firms, employ 50 or fewer employees. These firms employ eight out of ten working people in the state, or nearly 1.36 million people. Most of the adult citizens who are uninsured are employed, primarily by a small business. According to federal statistics, 54.3% of New Jersey employers

with fewer than 50 employees provide health care coverage. This represents about 135,550 employers that employ 737,500 people.

New Jersey employers have stated that the primary reason for offering coverage is to attract and retain qualified workers. *Rutgers Center for State Health Policy* (2004). Most employers that do not offer health insurance indicate that the cost is too high. *Id.* Research indicates that even a 30% reduction in premiums would cause only about 15% of currently uninsured small employers to offer coverage. *See* The Commonwealth Fund, Task Force for the Future of Health Insurance (2002).

In 1992, New Jersey reformed its individual and small group insurance market. All insurance carriers (other than HMOs) are required to offer five standardized contracts on a guaranteed issued, community rated basis. Carriers may not consider the health status or past claims experience of a group in determining premiums. The law requires carriers to limit variation in cost to a two to one ratio. Thus, the rate for the highest cost group (based on age, gender, and geography) may not be more than two times the rate for the lowest cost group of the same size. The number of individuals insured by these small employer plans peaked in 1999 at 937,784 but has since declined to about 884,000. *Health Affairs* "Community Rating and Sustainable Individual Health Insurance Markets in New Jersey" Vol.23, No.4.

New Jersey's health care reform has done little to mitigate health care inflation. According to the N.J. Business and Industry Association Health Insurance Survey, the average cost per employee in 2008 was \$7,861, nearly double the cost in 2002. The cost of health care premiums in New Jersey rose nearly five times faster than wages this decade, according to Families USA, a Washington-based nonprofit group. Their report issued in 2008, found premiums in New Jersey rose 71 percent while earnings increased just 15 percent between 2000 and 2007. New Jersey ranked 28th among states in the rate of growth in premiums compared with earnings.

While imprecise, New Jersey may likely receive \$1 billion dollars in subsidies, Medicaid funds, tax credits and direct grants to cover the costs of expanded coverage, the creation of community health clinics, training of primary care providers and nurses, and other programs. In return, states must comply with substantial administration and record keeping requirements across the entire health care industry and conform its insurance laws to federal standards.

The biggest risk for New Jersey is that small employers who are already providing health care insurance to their employees will simply choose not to sponsor a health care plan knowing that their employees will still be covered by a mandated plan. The long recession and its difficult aftermath will exacerbate the risk of small employers bailing out of the group market as the slow to recover economy has resulted in last-in, first-out layoffs. Many younger, healthy workers remain unemployed as older workers who consume more health care have scrambled to hold on to their jobs. Wages have been saved, but premiums continue to escalate.

This can't be sustained. In 2014, vacated jobs will be filled by workers who will be legally required to have insurance on their own account. They may be able to bargain for higher wages to cover the cost; if not, some employers will pay a small penalty, still cheaper than providing the insurance. In short, there will be fewer reasons for many smaller employers to stay in the game. The insurance carriers, of course, know this and their pricing over the next few years will likely make this a self-fulfilling prophesy. That is basically what is happening now in Massachusetts, which has a similar reform.

Advocates of the Act have taken a big leap of faith that small employers will not respond to the opportunity to cut back or drop coverage entirely. They believe that the competition for talented employees will maintain the status quo. For small knowledge-intensive firms, where talent is scarce, health care benefits will be a big attraction. But for many small employers, the skills of an uninsured workforce weighed against the increasing costs of health care may cause them to drop coverage altogether, particularly with the assurance that every employee will have access to the mandated plan.

The complexity and enormity of the Act will require states to develop the public and private infrastructure to implement the law. Conceivably, every important state government agency will be impacted. While New Jersey's insurance laws already substantially conform to federal standards, at present the state bureaucracy may be incapable of administering federal health care funds, particularly in the urban areas that will be targeted for clinics and for wellness and prevention programs.

Moreover, even if comprehensive reform is not enacted, the trajectory of health care inflation will continue to be a drag on New Jersey economy for the indefinite future. In terms of policy, the state cannot risk creating the perverse incentive for some employers to cancel employer-sponsored coverage simply to shift the costs onto the employers who continue to provide insurance. An employer tax when the state's economy is losing jobs is untenable. Therefore, whatever happens in Washington, health care reform will remain at the top of the policy agenda in Trenton.