Mandated Health-Care Socialism

BY JOHN SEILER

Call it mandated health-care socialism. Those favoring complete government control of medical care in America know their dreams can't come true right away. The demise of the Clinton scheme in 1993 showed that. So advocates of socialized medicine are applying the death of a thousand scalpel cuts to what remains of private-sector medical care. Two methods are being used: mandated coverage and mandated benefits.

So far only Hawaii and Massachusetts have mandated coverage supposedly for every state resident, while Tennessee has had a nonmandated "universal coverage plan" since 1994. Hawaii's mandate began in 1974. Not surprisingly, the government mandate distorted the market. The law applies only to employees working more than 20 hours a week. The result: Today 10 percent of residents still are not covered under "universal" coverage, according to a 2006 study of health-insurance mandates by Michael Tanner of the Cato Institute.

Meanwhile, doctors are fleeing the islands. Smaller medical providers lack the financial resources to deal with the expense, red tape, and unpredictability of the most socialized medicine scheme in any of the 50 states.

In April 2006 then-Massachusetts Gov. Mitt Romney, now a Republican candidate for president, signed his state's universal-coverage bill. A previous socialized-medicine scheme in the Bay State was pushed into law in 1988 by Gov. Michael Dukakis, a Democrat, as part of his "Massachusetts miracle." During a three-year phase-in, costs rose so high that the program was shelved by the legislature.

Romney's new law caused problems even before it went into effect on July 1, when everyone had to have coverage or pay a "fee," really a new tax. "Early bids suggest the soon-to-be compulsory insurance policies that will pass muster under the scheme will be expensive, starting at a whopping $380 per month, or $4,560 a year, for an individual," a January 23, 2007, *Wall Street Journal* editorial noted. "That's hardly surprising when you look at costs in other states that overregulate their insurance markets, such as New York."

In April 2006 then-Massachusetts Gov. Mitt Romney, now a Republican candidate for president, signed his state's universal-coverage bill.

Now the new Massachusetts contagion has spread to California, whose governor, Republican Arnold Schwarzenegger, is an in-law of longtime socialized-medicine and mandated-insurance-benefit advocate Sen. Edward M. Kennedy, a Massachusetts Democrat. Schwarzenegger's plan is similar to Romney's.

It's not clear yet how far Schwarzenegger will be able to push his proposal. If state courts rule that his "fee" increases really are taxes, then a two-thirds vote in the legislature will be required for passage. In that case, the legislature's GOP minority, whom the governor has shunned and taken for granted, would have the power to play spoiler.

However, a poll released last January by the Public Policy Institute of California found that 71 percent of state residents support the governor's proposal, with

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only 23 percent opposed. (Six percent don't know.) Even 55 percent of Republicans favored the proposal, with 39 percent opposed.

So it's likely some sort of mandated health care will be passed, although probably not as comprehensive or expensive as the governor proposed.

This has national importance because, for better or worse, California is a major incubator of ideas, from surf music to environmental policy.

A final factor in mandated coverage is that the Massachusetts and California schemes may violate a 1974 federal law, the Employee Retirement Income Security Act (ERISA), which was designed to standardize medical and retirement coverage across state lines. (After the U.S. Supreme Court upheld a challenge to the Hawaii plan under ERISA in 1983, it was exempted by Congress and President Reagan.)

Last July U.S. District Judge Frederick J. Motz cited ERISA in throwing out the so-called "Wal-Mart Law" passed in Maryland. The law mandated that any company with more than 10,000 employees must spend at least 8 percent of the payroll on health-care benefits. Motz wrote, "The Act violates Erisa's fundamental purpose of permitting multi-state employers to maintain nationwide health and welfare plans, providing uniform nationwide benefits and permitting uniform national administration." The ruling was upheld on appeal.

The *Wall Street Journal* editorialized that the ruling "could spell trouble for the California and Massachusetts schemes."

TennCare, another experiment in medical socialism, was different from the other systems because it didn't have a mandate. Nevertheless, it also proved to be an expensive disaster. In 1994 then-Vice President Al Gore, a Tennessee native, convinced the state's Democratic governor, Ned McWherter, to implement a portion of the Clinton plan at the state level. The hope was that it would prove so successful that other states would adopt it and then the plan could make a comeback at the national level.

TennCare, explains the entry in Wikipedia, "was designed to expand health insurance to the uninsured through the state's Medicaid program by utilizing managed care." Centralization was supposed to reduce costs, with "free" money from the federal government picking up any financial slack.

There was one good result of imposing TennCare. When costs soared so high that in 2000 the state legislature was about to pass the first Tennessee income tax—with a 5 percent top rate—thousands of irate citizens marched on Nashville and forced the politicians to abandon the tax.

But predictably, many companies stopped providing medical insurance, forcing employees to sign up with TennCare. "In short order, one quarter of the state's population was on TennCare," Patrick Poole wrote on AmericanThinker.com last January. TennCare "has forced dozens of hospitals out of business, pushed thousands of doctors and other health care professionals out of the state, destroyed any semblance of competitive health insurance market, and nearly drove the state government into bankruptcy."

There was one good result of imposing TennCare. When costs soared so high that in 2000 the state legislature was about to pass the first Tennessee income tax—with a 5 percent top rate—thousands of irate citizens marched on Nashville and forced the politicians to abandon the tax. Several legislators, upset at actually hearing their constituents' views, were carted off to emergency wards. Citizens held up signs reading, "Carry them all to the ER!"

Mandated Benefits

A less obvious path to socialized medicine is mandated *benefits*, which require insurance providers to cover everything from athletic trainers in Arkansas to breast reduction in Maine. With mandated *coverage*, however bad a scheme is, people notice that a mammoth new bureaucracy and tax increases have been

imposed. But with mandated *benefits*, the state or federal legislature simply passes a law requiring medical insurance to include coverage for a particular ailment. Except for the special interests that benefit monetarily, few people even know what's going on.

"Mandated coverage is a dagger to the heart of the private health care system," says Grace-Marie Turner, president of the Galen Institute, which advocates free-market medical reforms. "But coverage mandates are slow poison."

Currently, the federal government only mandates coverage for prenatal care and two nights in the hospital for new mothers. The real action is at the state level, where the number of mandates has risen from seven in 1965 to 1,843 as of 2006, according to a March 2006 study by the Council for Affordable Health Insurance (CAHI), an insurance-carrier group that favors market solutions. Turner said health-care mandates are like requiring that everyone drive a fully loaded Lexus, while prohibiting anyone from purchasing a Ford, Chevy, or Honda. Even if someone wants medical insurance without the mandates, that option is not available, leading to some people not having any insurance.

According to CAHI, the states with the most mandates are Minnesota—62—and Maryland—59. The fewest mandates are 13 in Idaho and 17 in the District of Columbia. The average is 36.

Here are some of the mandates the 50 states and District of Columbia have imposed, followed by the number of states. Unless indicated otherwise, the added cost to insurance is less than 1 percent:

Benefits mandates:

- Alcoholism, 45 states (1 percent to 3 percent added cost)
- Alzheimer's, 2 states
- Ambulance services, 8 states
- Breast reconstruction, 48 states
- Chlamydia, 3 states
- Cleft palate, 14 states
- Contraceptives, 30 states (1 percent to 3 percent added cost)
- Dental anesthesia, 29 states
- Diabetic supplies, 47 states
- Drug-abuse treatment, 34 states
- In vitro fertilization, 14 states (3 percent to 5 percent added cost)
- Mental health general, 40 states (1 percent to 3 percent added cost)
- Mental-health parity, 42 states (5 percent to 10 percent added cost)
- Newborn hearing screening, 16 states
- Newborn sickle-cell testing, 3 states
- Off-label drug use, 37 states
- Port-wine stain (a skin discoloration) elimination, 2 states
- Prescription drugs, 3 states (5 percent to 10 percent added cost)
- Prostate screening, 32 states
- Second surgical opinion, 9 states
- Well-child care, 31 states (1 percent to 3 percent added cost)

Provider mandates:

- Acupuncturists, 11 states (1 percent to 3 percent added cost)
- Chiropractors, 46 states (1 percent to 3 percent added cost)
- Dentists, 36 states (3 percent to 5 percent added cost)
- Dieticians, 3 states
- Marriage therapists, 13 states
- Massage therapists, 5 states
- Naturopaths, 3 states
- Osteopaths, 21 states (1 percent to 3 percent added cost)
- Physical therapists, 16 states (1 percent to 3 percent added cost)
- Podiatrists, 35 states
- Psychiatric nurses, 16 states
- Psychologists, 44 states (1 percent to 3 percent added cost)
- Social workers, 27 states (1 percent to 3 percent added cost)
- Speech or hearing therapists, 18 states

Covered-persons mandates:

- Adopted children, 42 states
- Conversion to nongroup insurance, 42 states (1 percent to 3 percent added cost)

- Dependent students, 12 states
- Handicapped dependents, 39 states (1 percent to 3 percent added cost)
- Newborns, 51 states (1 percent to 3 percent added cost)
- Noncustodial children, 10 states
- Domestic partners, 2 states

Some other mandates not yet prevalent nationwide are: aforementioned athletic trainers in Arkansas, and breast reduction in Maine, smoking cessation in Maryland, varicose-vein removal in Maine, hormone-replacement therapy in Nevada and New York, early intervention service in Rhode Island, and psychotropic drugs in New York and Wisconsin.

What next, full coverage for nips and tucks?

What if you are a teetotaler who never touches a drop of booze, think chiropractors and acupuncturists are quacks, or take Thomas Szasz's critical view of psychiatry? Shut up and pay anyway. Government knows better what should be included in your medical insurance.

Turner said that "everybody has a vested interest in getting their interest covered, from the counselors to the chiropractors. It's so self-interested." She added that, according to Congressional Budget Office numbers, for every 1 percent increase in the cost of insurance, 200,000 to 300,000 people nationwide lose their insurance. State mandates keep about one quarter of Americans from getting health insurance, according to John C. Goodman, president of the Dallas-based National Center for Policy Analysis, a free-market think tank.

Costs in One State

Using that estimate of coverage loss caused by insurance mandates, let's look at how the system works in California, with one-ninth of America's population. Every 1 percent increase in the cost of insurance therefore means 22,222 to 33,333 people lose insurance. In-vitro fertilization coverage mandated by the state raises costs 3 percent to 5 percent. So this mandate alone means 66,666 to 166,665 people lose health insurance.

California also mandates mental-health parity, which raises costs 5 to 10 percent. This mandate causes 111,110 to 333,330 people to lose coverage.

Put another way, if just these two mandates were repealed in California, from 177,776 to 499,995 people could again afford insurance. That would go a long way toward helping the 6.5 million Californians Schwarzenegger says are uninsured and supposedly would be helped by his universal coverage proposal.

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A 1998 study Turner co-wrote with Melinda L. Schriver for the Heritage Foundation looked at 16 states that "were most aggressive in passing laws designed to increase access to health insurance for their uninsured citizens. They imposed mandates and regulations which primarily affected health insurance for small employers and individual citizens, and put into law at the state level many of the provisions contained in the failed Clinton health care bill."

The result: the uninsured populations in those 16 states rose eight times faster than in the other 34 states: "Each of the 16 states experienced a *decline* in private and individual health insurance coverage and an *increase* in the number of uninsured citizens." These 16 states "actually ended up harming their citizens by increasing the regulation of their insurance markets, inadvertently squeezing more and more people out of the system."

Mandates may seem to benefit those who use the services or need the treatments, but even seemingly obvious mandates—such as care for infants—push med-

ical care toward a centralized system. And even the obvious mandates raise costs and so cut some people out of coverage.

Good and Bad Trends

As most states have already imposed some of the more "basic" mandates, such as prenatal care, more obscure ones are cropping up, such as those called "slacker mandates." Is your lazy college grad hanging around playing video games? Well, New Jersey mandates health insurance for unmarried dependents until age 30, and New Mexico does so until 25. Most other states mandate coverage only until 19—22 or 23 for college students.

CAHI warned in its 2006 study that new mandates "have a way of 'making the rounds,' finding their way into bills all over the country." On the positive side, 30 or more states now require that the costs of a mandate be assessed before it is imposed. So at least legislators, and citizens, know how costly a mandate will be before it takes effect.

And a May 2007 "Trends & Ends" memo from CAHI found the imposition of "state-mandated benefit legislation is slowing down. That change implies that state legislators are finally getting the message."

CAHI Research and Policy Director Victoria Bunce said that tallies of the numbers of mandates are sketchy until 2004. But her research showed mandates growing at about a 3.7 percent rate per year from 1992 to 2004.

In 2006, total state mandates rose by only 0.7 percent over 2005, a sharp downturn. However, through May 2007, total state mandates increased by 2.9 percent over 2006. Although higher than the previous year, that amount still is less than the average increase of what Bunce called the "explosion" of mandates in the 1992–2004 period. But the 2006 uptick shows that the mandate cancer is far from being in remission.

One obvious way out of this problem is for states to follow Utah's example, which has stopped 15 mandates, and begin repealing as many mandates as possible.

Goodman provided some other ideas:

- Create huge exceptions to some or all mandates for groups such as small businesses, individuals, or people on Medicare.
- Allow people to buy insurance policies just like those carried by state employees, often including legislators themselves, which frequently are exempted from state mandates. Not allowing regular citizens the same choices as legislators themselves is sheer hypocrisy.
- Don't increase federal involvement in medicine. Goodman warned that more federal meddling means "there will be lots more federal mandates."
- Allow citizens of one state to purchase any insurance policy from a carrier in any other state. It's silly that such purchases are banned. People buy goods and services from out of state all the time, often over the Internet. Why not health insurance?

There still is time for Americans to reverse the piecemeal advance toward health socialism known as mandated benefits. Reducing even one mandated benefit a year in every state would be a better prescription for health care than an apple a day.