

## THE BOTTOM LINE

The preponderance of evidence indicates that the buildup of health care mandates has caused insurance premiums to rise.

The state should require independent cost-benefit analysis before issuing any new mandates. Similar cost-benefit analysis should be required as part of a sunset review of existing mandated benefits.

Finally, the state should permit insurers to issue a basic insurance plan that provides standard coverage, unburdened by costly and unconventional mandates.

## Health Care Mandates Boost Costs

Health care mandates increase costs and restrict access to insurance. That conclusion from last year's WashACE report, *Shaping Up Health Care*, remains valid today.

According to the Council of Affordable Health Insurance (CAHI), Washington ranked seventh highest in the nation, with 48 separate mandates in 2004. CAHI defines a mandate as "a requirement that an insurance company or health plan cover ... [specific] health care providers, benefits and patient populations." Since we released *Shaping Up Health Care*, CAHI published its 2005 analysis, which did not alter the rankings. Washington is still credited with 48 mandated benefits. Costs remain a concern.

### ESTIMATED COST OF MANDATES

CAHI estimates "mandated benefits currently increase the cost of basic health coverage from a little less than 20 percent to more than 50 percent, depending on the state." Their analysts provide cost estimates for 58 benefit categories, 33 provider groups, and 8 patient populations. For each, they estimated the increased cost associated with the coverage. In assessing the cost impact, their actuarial working group analyzed insurance data and calculated "cost-range estimates" of the effect of the mandate on a comprehensive family policy that did not include the coverage. The estimates fell into four categories: less than one percent, from one to three percent, from three to five percent, and five to ten percent. For example, alcoholism coverage, mandated by 45 states, including Washington, is estimated to add from one to three percent. Mental health parity, mandated by 42 states, not presently including Washington, adds from five to ten percent.

In assessing these estimates, CAHI suggests some caution. Some mandated services would be included in nearly every standard policy, regardless of statutory requirements, and therefore mandating them would have negligible effect on costs. Further, mandates may vary significantly from state to state, with different limitations and exemptions.

Although Washington ranks near the top of the states in the number of mandates, number alone does not tell the story. Some mandates are more expensive than others. Mental health parity, the CAHI analysts point out, has "a much greater impact on the costs of premiums than would mandates for inexpensive procedures which few people need."

As we reported in *Shaping Up Health Care*, a 2002 PricewaterhouseCoopers study estimated that 15 percent, about \$10 billion, of the in-

crease in health insurance costs between 2001 and 2002 could be attributed to government mandates and regulation. That increased cost contributed to the inability of employers and individuals to purchase health care policies, swelling the ranks of the uninsured nationally by 1.4 million.

A Galen Institute report cited in our earlier WashACE study placed Washington with sixteen states considered the “most aggressive” in passing mandates, noting that in these states uninsured populations grew eight times faster than in the other 34 states. When the cost of insurance increases, so too does the number of people forced to go without coverage. Mandates increase costs.

In addition to an abundance of economic and public policy literature touching on the issue, many states have attempted to quantify the costs of existing and proposed mandates. A quick web search found analyses in Wisconsin, Texas, Pennsylvania, New Jersey, Louisiana, and others. Consulting firms like Milliman promote their expertise in estimating the impacts of proposed mandates on prices and coverage. Despite these efforts, variation among the states and their approaches to mandates makes it difficult to apply the research uniformly. There is no standard “cookbook” that will allow lawmakers to determine unequivocally the cost of proposed mandates.

More troubling, even after a mandate has been put in place, lawmakers will have difficulty in isolating the costs. Proponents will claim that higher costs associated with the use of a mandated benefit allow savings elsewhere in the system (e.g., by visiting my naturopath I no longer take as many prescription drugs and have been able to reduce trips to my physician). Supporting or refuting such claims requires careful analysis of data over time. Insurance companies, the best source of such information, may not themselves have good data; even if they do, they may be reluctant to share the information with regulators.

And, we should acknowledge that there’s a difference between adding to the cost of health insurance and adding to the cost of health care. Patients may routinely pay out-of-pocket for services not covered by their health insurance plans. When the state mandates that such services be covered by health insurance, the costs of the service are borne by all insured, adding to everyone’s premium costs while reducing the personal expenses of some. Of course, the inclusion of the service also increases the likelihood that more patients will avail themselves of the benefit.

## **RETHINKING THE ROLE OF MANDATES**

Last July, The Federal Trade Commission and the Antitrust Division of the Department of Justice (FTC-DOJ) released a sweeping analysis of the health care marketplace and the role of competition, antitrust, and consumer protection. The agencies weighted the competing claims of proponents and opponents of mandates.

In essence, they say, proponents see mandates as an essential tool for assuring that consumers receive benefits that would otherwise be withheld from them by insurers and employers. Mandates, supporters further contend, reduce the problems of adverse selection: Employers

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might be discouraged from offering a benefit that might disproportionately attract employees who would make expensive claims. By mandating the benefit, the risk is more widely spread.

Opponents argue that mandates increase costs, leading some employers to drop coverage altogether. David Hyman, a professor of law and medicine at the University of Illinois, says of this, “We should not place the poor and less fortunate in the position of choosing between ‘nothing but the best and nothing’ when it comes to health care coverage – but excessive regulation will do exactly that.” As the FTC-DOJ report points out, “providers of the mandated benefit are usually the most vigorous proponents of legislation, making it more likely that the mandated benefit constitutes ‘provider protection’ and not ‘consumer protection.’”

As with the other analyses of the costs of benefits, the agencies concluded that “determining the actual cost of an individual mandated benefit can be difficult, (but) the aggregate cost of such mandates appears to account for a substantial percentage of premium cost.” With respect to “any willing provider” and “freedom of choice” provisions, however, the FTC was more definitive. FTC staff found that “these policies result in higher health care expenditures.” They cite a study demonstrating that states with such laws spend “approximately 2% more on healthcare than did states without such policies,” suggesting that “these laws reduce the ability of insurers to offer less expensive plans with limited provider panels.”

Rather than speculate on the cost increases associated with mandated benefits, the FTC-DOJ recommends governments reconsider whether mandated benefits best serve consumers. The agencies remind policymakers: “... such mandates are likely to reduce competition, raise the cost of health insurance, and increase the number of uninsured Americans.”

Lawmakers have allowed mandate proponents to misplace the burden of proof, requiring opponents to identify the cost increases associated with the mandate. While the aggregate evidence is compelling, as noted above, documenting or estimating the cost increases for specific mandates can be daunting and often the data are simply unavailable.

The FTC-DOJ suggests, “for mandates to improve the efficiency of the health insurance market, state and federal legislators must be able to identify services the insurance market is not currently covering for which consumers are willing to pay the marginal costs. This task is challenging under the best of circumstances – and benefits are not mandated under the best of circumstances.”

As Hyman testified, lawmakers face obstacles in weighing the merits of individual mandates: “Evidence on the cost of a particular intervention is frequently unavailable, and estimates are subject to considerable uncertainty. The time-frame for doing empirical research ... is counted in months and years, while the time-frame for legislation and regulation is counted in days and weeks.” This leaves legislators subject to regulatory arguments based on “bad anecdotes and popular appeal,” abetted by “entrenched providers.”

## CONCLUSION

Mandated benefits increase the cost of health insurance, reduce choice, and increase the number of people without insurance. Hardly anyone disagrees, although some will argue that cost increases are minor relative to the benefits, that reduced choice also means some people lose access to important benefits, and that those that are pushed out of the insurance market because of mandated benefits would doubtless have lost coverage anyway. That is, to proponents, the benefits outweigh the costs, though neither side seems able to support their argument with irrefutable research.

Nonetheless, each additional required benefit carries with it a cost. And the accumulation of benefits causes the costs to mount consequentially. The CAHI estimate of from 20 percent to more than 50 percent seems reasonable, though that band clearly is extraordinarily wide. Given the number and type of mandates in effect here, Washington surely falls on the higher end of the CAHI range.

The inability to quantify the costs of each of Washington's mandated benefits, obviously, can hardly be an argument that they have little effect. Rather, in the absence of contrary information, the state should approach mandates with caution, requiring independent cost-benefit analysis before issuing new mandates. Similar cost-benefit analysis should be required as part of a sunset review of mandated benefits. (Obviously, such a change in practice would require the Legislature to subject itself to a new regulatory regime.) And, finally, given the preponderance of evidence suggesting that the buildup of mandates has caused insurance premiums to rise, the state should permit insurers to issue a basic insurance plan that provides standard coverage, unburdened by costly and unconventional mandates.

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