

HEALTH CARE FOR MASSACHUSETTS CAMPAIGN

649 Massachusetts Avenue, Suite 8 ♦ Cambridge, MA 02139 ♦ (617) 868-1280

Health Care Insurance for Massachusetts Constitutional Initiative Petition

ATTORNEY GENERAL'S SUMMARY OF NO. 03-09

This proposed constitutional amendment would impose an obligation and duty on the state Legislature and executive officials, on behalf of the Commonwealth, to enact and implement laws to ensure that no Massachusetts resident lacks health insurance that is comprehensive, affordable, equitably financed, and covers all medically necessary preventive, acute and chronic health care and mental health care services, prescription drugs and devices.

PETITION FOR A CONSTITUTIONAL AMENDMENT RELATIVE TO THE PROVISION OF HEALTH INSURANCE (Language with Footnotes)

SECTION 1: The People of the Commonwealth of Massachusetts hereby declare it necessary and expedient to alter the Constitution by the adoption of the following Article of Amendment: Upon ratification of this amendment and thereafter, it shall be the obligation and duty(1) of the Legislature and executive officials, on behalf of the Commonwealth, to enact and implement such laws as will ensure that no Massachusetts resident lacks(2) comprehensive(3), affordable(4) and equitably financed(5) health insurance(6) coverage for all medically necessary(7) preventive, acute and chronic health care and mental health care services, prescription drugs and devices.

INTERPRETATION OF LANGUAGE*

1. "Obligation and duty"

- Creates an enforceable right for the Commonwealth's residents in the aggregate.
- Does not create an individual right to specific health services, treatments or coverage.

2. "No Massachusetts resident lacks"

- Requires the Commonwealth to ensure there is at least one place where every resident can obtain coverage whether in the private market or through a public program or programs.
- Does not require the Commonwealth to be or preclude it from being an insurer but probably does require the Commonwealth to at least "make a market" in insurance as it does for public employees through the Group Insurance Commission.
- Leaves elected officials free to define residency based on any of a variety of variables including duration of physical presence and intent for moving to Massachusetts.

3. "Comprehensive"

- Implies a defined benefit package broad enough to ensure the best value for resources allocated.
- Should be read with "preventive, acute and chronic health and mental health care, including prescription drugs and devices" to include a full range of cost-effective, coordinated, evidence-based medical, surgical and mental health care services to prevent and treat illness and injury.

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("Comprehensive" – continued from prior page)

- Requires coverage for effective screening and disease prevention services.
- Should be read with "affordable" and "medically necessary" to establish limits which could change over time to reflect changes in evidence-based best practices, available resources and innovative technologies.
- Does not include or preclude access to new and unproven technologies.

4. "Affordable"

- Applies equally to all stakeholders - individuals, employers, insurers, providers and hospitals, to name a few - that currently finance or subsidize the health care system whether as consumers of insurance or services, taxpayers or providers of uncompensated or under-compensated care.
- Requires pricing that does not create an unreasonable financial barrier to obtaining the coverage essential for access to timely, cost-effective care.
- Implies some form of subsidy for low- and middle-income residents and their families, the self-employed and their families, and for businesses with limited or negative cash flow - just as employers that offer insurance and their workers currently receive public subsidies through the tax system.
- Requires cost containment, including, perhaps, some form of overall cap to real spending.
- Encourages, if not requires, cost savings through:
 - Administrative simplification, streamlining and modernization;
 - Incentives to providing timely, cost-effective, evidence-based care in appropriate settings;
 - Improved quality and safety to reduce medical errors and avoidable hospitalizations;
 - Consumer education about how to lower costs by seeking appropriate care early, making life-style changes, following treatment programs;
 - Consumer education about the relative benefits and cost-effectiveness of different interventions, etc;
 - Reimbursement system reforms to encourage prevention, coordinated care, follow-up to reduce the need for expensive, high tech interventions;
 - Bulk purchasing where applicable;
 - Elimination of redundant health insurance components of workers compensation, auto and other liability insurance products.

5. "Equitably financed"

- Assumes that every stakeholder who benefits, either directly or indirectly, from a universal health insurance system contributes to financing it whether through direct payments, taxes or tax expenditures.
- Implies some sort of sliding-scale premium mechanism based on ability to pay.
- Assumes an end to cost shifting among stakeholders.
- Implies creation of a reserve fund to ensure adequate resources to provide coverage during periods of unusually high demand for services or subsidies and/or revenue shortfalls.

6. "Insurance"

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- *Insurance*, whether public or private, is the standard mechanism used to spread risk and control the costs of unpredictable and/or episodic events. The word itself does not suggest a private or public system as our current patchwork of private and public health insurance programs demonstrates.

7. "Medically necessary"

- Well-litigated term used by all public and private insurers to define coverage, utilization and costs that will minimize the likelihood of further litigation on coverage issues.
- Implies the inclusion of benefits based on medical evidence and/or consensus medical opinion.

* These interpretations are provided simply as illustrations of what might be considered reasonable and to which the courts might be expected to defer.