



# CLIENT ADVISORY

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The Illinois Adequate Health Care Task Force (Task Force) recently submitted its recommendation to the Governor and General Assembly regarding providing access to affordable health care to all residents of Illinois. The Adequate Health Care Task Force Health Care Coverage Expansion Plan (Expansion Plan) goals are to: comply with the Health Care Justice Act (Illinois Public Act 93-073); preserve the current employer-based coverage system with its employer contributions and benefits of personal income tax and Federal Insurance Contributions Act exemptions; require personal financial responsibility for health care; encourage cost-effective, high quality care; minimize administrative spending on health care; spread the cost of coverage broadly across workers, employers and taxpayers; and minimize new State costs by adopting policies to promote cost-effectiveness, requiring an employer contribution for coverage and optimizing the use of Federal matching funds.

The Task Force reviewed five proposals from groups representing various industries affected by health care issues in Illinois. The Task Force submitted the proposals to a team of consultants for development of a "hybrid" model that would combine features of the five proposals and incorporate industry-wide best practices and experiences from other states. The Task Force and team of consultants proposed the Expansion Plan which contains two options: Option A, strongly recommended by the Task Force, relies on private insurance carriers for persons seeking coverage in the small group and individual markets; and Option B includes a State self-insured plan for such persons.

Under the Expansion Plan, all Illinois residents, including undocumented immigrants and non-residents enrolled in Illinois colleges and universities, will be required to either obtain health care coverage or be assessed a tax penalty. Those residents under 400% of the federal poverty level will have subsidized coverage options available to them. All employers are expected to contribute to the health care costs of their workers by

either providing a voluntary health insurance plan or by paying an amount to the State that is scaled to wages.

Implicit in the Expansion Plan is the recognition that substantial funding is required to accomplish the Act's goals. Preliminary estimates of funding requirements are:

1. Estimated state funding requirements of \$3.6 billion (Option A) or \$3.1 billion (Option B);
2. Assumes an employer assessment totaling approximately \$1.5 billion;
3. Includes an estimated \$769 million (Option A) or \$1.171 million (Option B) of total State costs to pay increases to Medicaid providers up to 100 percent of costs (includes payments for existing public program participants); and
4. Does not include implementation costs.

Other key features of the Expansion Plan include:

1. a comprehensive standard benefit package ("Comprehensive Standard Plan") will be available on a guaranteed-issue basis to all individuals and small groups;
2. employers will be expected to contribute to health insurance coverage for their workers by paying a per worker assessment that will be used to partially cover the cost of the premium subsidies. Employers will receive a credit against this assessment if they provide coverage directly. The Expansion Plan does not include a specific recommendation as to the extent of the employer assessment and the specific conditions under which an employer will receive a credit against the assessment;

3. small employers with a majority of low wage workers are encouraged to offer coverage by allowing them to contribute as little as 50% of the cost of single coverage when offering the Comprehensive Standard Plan and no contribution will be required for dependents;
4. changes to the insurance market will be implemented, including a reinsurance program for Comprehensive Standard Plan products, minimum medical loss ratios of 85%, tighter limits on the variation in a carrier's base rates for all products, and limits on annual rate increases for the Comprehensive Standard Plan;
5. the State will establish and administer the Illinois Health Education and Referral Center which will operate as an enrollment broker and provide web-based information on existing provider quality efforts;
6. public coverage will be expanded to cover additional low-income parents, childless adults with very low incomes and specific disabled populations.
7. provider payments for current and future public programs will be increased to 100% of costs;
8. the State will implement Long-Term Care Partnerships in Illinois to encourage the purchase of long-term care coverage;
9. additional strategies are proposed to increase access to care, including State grants for capital investments, health care workers and public health interventions to underserved areas and building on existing scholarship and assistance programs to increase the number of providers of color and providers serving underserved areas; and
10. the current State Children's Health Insurance Program (SCHIP) and Medicaid benefit packages will be maintained.

Plan is designed to be implemented over a two-three year period with necessary political support. In addition, this recommendation addresses two significant issues: 1. the employer assessment provision which may face significant legal challenges from employers related

to ERISA preemption issues<sup>1</sup>; and 2. the ability of the State to expand Medicaid coverage would be dependent on its ability to demonstrate budget neutrality in its 1115 waiver application.

As mentioned, the Expansion Model requires employer participation in health care coverage. The following are two areas of specific interest to employers:

#### Support for Small, Low-Wage Employers

Small, low-wage employers may contribute as little as 50% of the cost of single coverage when they offer the Comprehensive Standard Plan, and there is no requirement for contributions for dependents. Employers must however: 1. enroll at least 75% of full-time workers who otherwise do not have evidence of qualified coverage; and 2. establish a Section 125 plan, which allows employees to contribute to premiums on a pre-tax basis.

#### Employer Assessment

The Expansion Plan requires a minimum level of employer effort that will be required by all employers. Employers will pay an assessment to the State, with potential assessment exemptions and phase-ins for small employers. Employers will receive a credit against this assessment if they provide at least a minimum level of coverage. These assessments will help fund the premium assistance for low-income individuals and other state activities associated with the recommendation. As mentioned above, the Expansion Plan does not list the extent of the employer assessment and the specific conditions under which an employer will receive a credit against the assessment. In the Expansion Plan, a model is used to demonstrate how the assessment structure is implemented. The model applies to employers with 25 or more employees and extends to

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<sup>1</sup> The State of Maryland attempted to regulate the level of group health care expenses that must be provided to employees of large employers. The Act mandated that private employers with 10,000 or more employees spend at least 8% of their total payroll on employee health insurance costs. Covered employers failing to do so would be required to pay the State the amount by which their spending fell short. The U.S. Court of Appeals for the Fourth Circuit held that the law was preempted by ERISA. The court found that the ERISA preemption rules prevent a state from enforcing laws that are "connected with" employee benefit plans. The court noted that the enactment of similar laws in other jurisdictions would force large employers to tailor their healthcare benefit plans to each specific state or even each specific locality in which such employers do business, creating a "regulatory balkanization" that the preemption rule was designed to avoid.

employers with 10 or more employees in the third year of the program. This model requires employers to contribute at least 4.8% of the total payroll for their Illinois workers (subject to a cap of \$2,500 per employee). The Task Force recommendation states that the following are issues that need to be studied further to determine the final parameters for the assessment:

1. employer incentives to drop or not offer coverage, based on the amount of the assessment.
2. whether or not the assessment should reward employers who provide coverage for dependents (the Task Force notes that the employer assessment policy used for cost and coverage estimates does not recognize dependent coverage as counting towards the credit against the employer assessment. As a result, it is possible that employers could be disincentive to provide dependent coverage).
3. amount of assessment as compared to the cost of providing coverage to an employee;
4. administrative burden of complying with the assessment;
5. impact of the assessment on all employers' finances and, in particular, small employers; and
6. impact of the assessment on the State's ability to retain employers.

