

# HEALTH CARE

**“Politicians deliberately restrict consumer choice, drive up prices, underpay doctors and hinder both access and portability. Then they turn around, blame the free market for the health care crisis and say the only way to save the system is a government takeover of health insurance in the form of a so-called ‘public option.’ If government is the cause of the health care crisis, then more government is not the solution.”**

**— U.S. Senator Jim DeMint (R-SC)**

While South Carolina is to be commended for having implemented in recent years several initiatives (e.g., list billing, small business health plans) aimed at lowering health care costs for working families, health care reform was not a priority for conservative legislators this past session. Instead of pursuing options to deregulate the health insurance market, lawmakers attempted to use a mix of tax increases, regulatory mechanisms and tax credits to expand health coverage through what are essentially public-private partnerships. The problem with this strategy, even when it aims at facilitating the purchase of insurance on the private market, is that it validates the assumption that the government is responsible for providing consumers with health care.

In fact, encouraging competition and consumer choice are the best ways to bring about affordable health care for South Carolina’s working families. As far as that goes, the single best thing the state could do would be to eliminate coverage mandates and permit consumers to purchase



South Carolina's Medicaid spending has increased 10 percent a year for the past two decades. Rather than expanding government control of health insurance even further, the state should encourage free market competition.

health insurance from any provider in the country. Doing so would create a nationwide health insurance market in which consumers could choose whatever plan fits their needs. If the 2009 session is any indication, legislators are still a long way from breaking open the health insurance monopolies that keep insurance coverage out of reach for medium-to-low-income families. What is worse is that President Obama and the U.S. Congress may well pass legislation implementing

a public health insurance option for individuals not eligible for Medicaid or Medicare. The result will be a consolidation of government-run health care that will seriously undermine the free market for health care.

## BEST IDEAS OF 2009



### Limiting medical malpractice liability



### More good bills that didn't pass:

**H 3532:** Provides a 25 percent income tax credit on premiums paid for long-term care insurance. This legislation is a good idea because most seniors in long-term care facilities end up on Medicaid once they spend down their savings. Encouraging seniors to purchase long-term care insurance is thus a free market alternative that reduces government expenditures in the long run. Currently, private insurance accounts for only 5 percent of nursing home expenditures.

#### S 168: Good Samaritan Bill

*Status: Passed the Senate; referred to Labor, Commerce & Industry Committee in the House*

This bill would remove liability for medical malpractice for licensed health care providers who voluntarily and without compensation provide services in an emergency or (with prior consent) nonemergency situation.

#### S 582: Physician Transparency Act

*Status: Referred to Medical Affairs Committee*

This bill would require physicians seeking licensure to disclose information related to prior disciplinary, malpractice and criminal actions. The information would become part of the

public record and made available via the internet.

► **Our take:** Good doctors shouldn't be hindered from providing free services out of fear of being sued for malpractice. South Carolina already caps medical malpractice awards (excepting gross negligence and fraud) at \$350,000 for noneconomic damages (§ 15-32-220). Legislation introduced this session (S 350 and H 3489) would also limit awards for personal injury cases. The flipside of medical malpractice reform, however, is greater accountability and transparency, e.g., as provided for by S 582.

## WORST IDEAS OF 2009

### ✘ Expanding single-payer or government-run health care

S 478: Universal Public Health Insurance  
*Status: Referred to Finance subcommittee*

This ambiguously named bill — “Nonstate Employee Health Insurance Plan” — would expand the state health insurance plan to include every S.C. resident who files a tax return. The plan would be administered by the Budget & Control Board, which would be empowered to establish premium rates.

► **Our take:** Like the Obama/ Kennedy health care proposal currently being discussed in Congress, this legislation would create a public health insurance option that would operate alongside currently existing private plans. As such, the state of South Carolina would essentially become the largest insurer in the state and, no doubt, use this power to fix reimbursement

## Three Ideas for Lowering Health Care Costs

**Eliminate coverage mandates.** The best way to make health insurance more affordable is to allow consumers to buy out-of-state insurance. Doing so would require eliminating coverage mandates that drive up the price of basic plans (cf. S 455). Several other states — Virginia, Florida, Georgia, Kentucky and Texas — currently offer “flexible benefits” or even “mandate-free” insurance coverage options.

**Prepaid doctor-patient agreements.** Such agreements are a good supplement to high-deductible health plans. Patients enrolled in these agreements usually pay their doctor a flat monthly fee for a range of primary and urgent care treatments. Currently the Department of Insurance reviews prepaid service agreements on a case-by-case basis, but more could be done to encourage this practice.

**Encourage alternatives to employer-based insurance.** In addition to encouraging the use of HSAs and HDHPs, the legislature should also encourage (via deregulation) the sale of health-status insurance. Such insurance provides long-term, portable insurance by insuring against future premium increases. UnitedHealth is already issuing such policies.

rates to providers. In reality, these costs would be shifted to consumers who purchase private insurance, thus providing an even greater incentive to switch to the public-option plan. Once that happens, the plan becomes unsustainable, leading to cost controls such as waiting periods and rationing — not to mention the inevitable tax increases necessary to pay for a single-payer system.

## **X More bad bills that didn't pass:**

**S 286:** Creates a targeted community health program in select counties for dental education and screening (passed the Senate).

**S 597:** Grants a sales tax exemption for prescriptions related to macular degeneration.

**H 3186:** Requires licensing for in-home care providers.

**H 3499:** Regulates nursing shifts.

**H 4054:** Pertains to educational efforts regarding adolescent well-physicals and immunizations (adopted by House).

### **H 3584: Cigarette Tax/Healthy Families Insurance Trust Fund**

*Status: Passed the House; favorable report from Finance Committee in Senate*

This bill would have increased the state cigarette tax from 7 cents per pack to 57 cents a pack and used the proceeds to fund the Healthy Families Insurance Trust Fund, as well as the Palmetto Health Care Safety Net Trust Fund.

## **Universal Health Care is Bad for Your Health**

In Canada, waiting times for medical treatments have become so severe that in June 2005 the Canadian Supreme Court ruled that the universal health system in Quebec violated citizens' rights to "life and personal security, inviolability and freedom." Canadians are waiting so long before they can see a doctor that their health, even their lives, are in jeopardy. Thus the court ordered an end to the government health care monopoly.

As reported by the Vancouver-based Frasier Institute, waiting times for even routine procedures are very long:

- Need an MRI? Prepare to wait almost 18 weeks.
- Need to see an eye doctor? Wait three months

for an appointment and then another three months for treatment.

- Want to see an orthopedist? A September 1 referral will get you in to see the doctor three days before Christmas. You can look forward to surgery on June 8 the next year.

Predictably, such waiting lists have the greatest impact on the hard-working middle class families who actually pay the taxes that keep the system afloat. Canadians with money go to the few remaining private clinics or to hospitals in the United States.

Source: The Civitas Institute

► **Our take:** This bill has three major flaws. First, H 3584 attempts to bypass the SCHIP/Medicaid system by offering subsidies to purchase health insurance on the free market. Better than a subsidy would be deregulation, which would automatically lower the price of health insurance. Second, H 3584 would increase the cigarette tax by 50 cents and thus cost the state more than 4,100 jobs. Finally, H 3584 will be expensive. Revenue raised by the tax would be used to create a new health care program extending a \$3,000 premium subsidy to households earning up to 200 percent of federal poverty level (FPL). In addition, the proposal would extend state-subsidized insurance to high-risk insurance pool participants earning up to 400 percent of FPL — \$88,200 for a family of four. One-third of South Carolinians aged 19-64 earn at or below 200 percent of FPL. With such a large eligible population, there would be substantial pressure to expand coverage beyond the spending limit envisioned by this bill.

## Other bills that passed:

**S 407:** Clarifies the terms under which anatomical donations may occur and, among other things, establishes criminal penalties for selling or purchasing organs (signed by governor).

**S 463:** Expands parameters of the Alzheimer's Disease Registry (signed by governor).

**H 3311:** Streamlines the adoption process by creating a responsible father registry through which unmarried biological fathers may file a paternity claim (signed by governor).

**H 3560:** The state budget included several targeted tax breaks for health care services and products, including viscosupplementation therapies and prescription meds for respiratory syncytial virus (RSV). The budget also included a proviso (17.3) allocating \$250,000 for a rural dentist program; this item was vetoed by the governor, but the General Assembly overrode the veto.

## ✘ Driving up the cost of insurance through subsidies and overregulation

**S 455: S.C. HealthNet Program**

*Status: Passed Senate; referred to Labor, Commerce & Industry Committee in House*

This legislation would require insurance companies to provide “medium-

### What do you think?

Let us know what you think are the best and worst bills of the session. Call us at 803-779-5022 or visit us on the web at: <http://www.scpolicycouncil.com/contact>

## Coverage Mandates in South Carolina

South Carolina currently has 29 coverage mandates that increase the cost of health insurance by an estimated 30 percent. In 2009, the General Assembly passed (as dictated by new federal legislation) a mental health parity coverage mandate. The law (S 390) caps increased costs arising from such coverage at 2 percent the first year and 1 percent thereafter. The legislature also passed a Medicaid chiropractic mandate (budget proviso 21.11); the governor's veto of the mandate was overridden by the General Assembly. Likewise, a proviso (21.23) requiring Medicaid to cover non-preauthorized medications for mental disorders was retained.

Other coverage mandates considered this session include:

**S 416:** Requires health insurance coverage under parental policies for handicapped children, as well as returning military personnel (under limited conditions). (Passed the Senate; referred to Labor, Commerce & Industry Committee in House.)

**H 3371:** Provides for continuation of care when a provider becomes out-of-network for an insurance plan (passed the House; referred to Banking & Insurance Committee in Senate).

**S 467/H 3650:** Prohibits alcohol exclusion provisions in individual medical policies (referred to Banking & Insurance/Labor, Commerce & Industry committees).

**S 613:** Requires coverage for approved cancer clinical trials (referred to Medical Affairs Committee).

benefits" plans suited for employees of small businesses. See also S 201, H 3875

### H 3210: Small Business Health Insurance Tax Credit

*Status: Referred to Ways & Means Committee*

This bill would create a state income tax credit (up to \$1,000 per employee) for small employers who provide health insurance.

► **Our take:** Both of these bills seem to do a good thing: increase the availability of private insurance by making it easier for small businesses to offer such plans to their employees. In effect, however, the bills create subsidies that must be paid for by other consumers and taxpayers. The main problem with the first proposal (S 455) is that it empowers the HealthNet Board to set what are perceived to be affordable rates for medium-benefit policies. In fixing the price of these policies, the Board merely creates an incentive for insurers to increase prices on other consumers. One redeeming feature of S 455 is that HealthNet plans would be exempt from all of South Carolina's 29 coverage mandates. The irony here is that if these mandates were lifted for all small business and individual plans, the price of insurance would fall by as much as 30 percent — all without creating another regulatory bureaucracy.



## Using tax increases and regulations to discourage unhealthy behaviors

### H 3584: Cigarette Tax/Healthy Families Insurance Trust Fund

*Status: Passed the House; favorable report from Finance Committee in Senate*

As indicated above, this bill would have increased the cigarette tax by 700 percent. Also see H 3014, H 3119, H 3204, H 3206, H 3211, H 3470, H 3471, H 3486

### S 38: Smoking Ban

*Status: Referred to Medical Affairs Committee*

This legislation would make it illegal to smoke in any public restaurant, bar or indoor recreational facility. Another bill, S 23, would make it illegal to smoke in a vehicle carrying a child. Also see S 31, H 3113, H 3523, H 3445, H 3317

### S 46: Trans-fat Ban

*Status: Referred to Medical Affairs Committee*

Following California, this legislation would make South Carolina the second state in the country to ban the use of trans fats in restaurants. Also see S 109, H 3297

► **Our take:** Granted, smoking and eating trans fats is unhealthy. What is even more unhealthy is ceding power to the government over such personal matters. Smoking bans violate personal property rights. A better alternative is to encourage the existence of smokers-only and smoke-free establishments and then let consumers choose whether to be exposed to second-hand smoke. Likewise, instead of an outright prohibition, consumers could begin to ask that menus indicate the use of trans fats.

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### Legislation most likely to come up:

A cigarette tax of some kind is likely — though, perhaps, not in an election year. A worst-case scenario is passage of a comprehensive federal health care plan that would require mandatory coverage and a massive expansion of government-sponsored health insurance. Legislation creating federally funded nonprofit health care cooperatives (similar to electric cooperatives) is also a possibility.

### Want to learn more?

See our May 2009 study showing the cigarette tax will cost South Carolina 4,100 jobs.