A CHALLENGE FOR US ALL: INSURING THE UNINSURED

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With nearly 45 million Americans lacking health insurance coverage,[2] America's uninsured problem has sparked a national debate certain to last well beyond the 2004 campaign season. Consumers, health insurers, hospitals, doctors, employers, advocacy groups, think tanks, trade associations and legislators have offered solutions ranging from universal health coverage to refundable individual health tax credits.

Followers of the debate over the uninsured are likely wondering when they will hear a proposal for a viable and effective solution. Those on the inside know that there is no silver bullet that will solve the problem. Instead of waiting for a magical solution, the focus of our efforts should be on understanding the multiple facets of the uninsured problem and addressing those facets as best we can. To understand the breadth of the uninsured challenge before us, this article discusses the uninsured population, examines existing measures and leading proposals aimed at reducing the number of uninsureds, and highlights the positions of the 2004 Presidential candidates, whose positions will likely frame the continuing debate in 2005.

Now hear this: Congress is preparing to take steps to help the insured *right now*. Since any legislation is sure to impact health insurers, those in the industry should consider how they can shape the debate *and* what they would like to get out of it. As our colleague, Andy Ehrlich, health care consultant and Vice President of B&D Sagamore, observes, "Republicans and Democrats are staking out positions which will provide the framework for a multi-pronged solution to the uninsured. Washington is bracing itself for Congressional action sooner rather than later. Health industry stakeholders would be wise to get ahead of this curve."

WHO ARE THE UNINSURED?

The uninsured population contains a diverse mix of individuals representing a variety of ages, incomes, ethnicities and employment levels. Some have the ability to pay for insurance but choose not to spend their money on coverage. Some are eligible for but do not take advantage of public health programs such as Medicaid. Regrettably, others cannot afford to pay for insurance and do not qualify for public health programs.

Certain characteristics have a disproportionate bearing on whether an individual has insurance coverage. For example, among families that did not include a high school graduate, about 25% were uninsured for the duration of 1998, and 50% were uninsured at some point during the year. However, only 3% of families with at least one college graduate were uninsured for the duration of 1998, and only 10% were uninsured at some point during the year.[3]

Other factors that have a bearing on insurance coverage are socioeconomic status, ethnicity and age. For example, 20% of families with an income below 200% of the poverty level were uninsured for all of 1998. Twenty-three percent of Hispanics, 14% of young adults ages 19 to 24, 16% of families in which the adults either worked part time or only part of the year, and 13% of families in which the adults were not employed were also uninsured all year.[4]

The challenge of defining the "uninsured" is not just caused by the diversity of this group. The Congressional Budget Office has observed that typical estimates provide an incomplete picture of the uninsured population. This is because individuals are constantly obtaining and losing coverage. Another variable is the length of time individuals remain uninsured. For instance, between 21 million and 31 million people were uninsured for all of 1998. But, as

many as 40 million people were uninsured at the same time during the year and a total of nearly 60 million people were uninsured for some period of time during the year.[5]

It should be clear that a one-size-fits-all model will not adequately address the challenges of these different segments of the uninsured population. In May 2004, during a kickoff event for *Cover the Uninsured Week*, a nonpartisan campaign to focus attention on the need to secure health coverage for all Americans, "Characteristics of the Uninsured: A View from the States" was released by The Robert Wood Johnson Foundation (RWJF). Risa Lavizzo-Mourey, President and CEO of RWJF, stressed the pressing need for reform.

> Too many people are uninsured. Too many families are being damaged, and too many lives lost. The human, economic and societal costs of nearly 44 million uninsured Americans are just too great for the country to bear any longer.[6]

CURRENT LAWS AND LEGISLATIVE PROPOSALS TO ASSIST THE UNINSURED

As difficult as it is to define the ranks of the uninsured, the myriad of options listed below demonstrate that it is even more difficult to find a way to ensure that they can access and afford the health insurance coverage that they and their families deserve.

(1) Health Savings Accounts

Last year's passage of the Medicare Modernization Act (MMA) established tax-free Health Savings Accounts ("HSAs") which are designed to help families and individuals purchase high deductible health plans to cover their current and future health care needs.[7] One of the underpinnings of HSAs is that consumers will have a better understanding of the true costs of their heath care decisions. HSAs can be used to pay for qualified medical expenses including eye glasses and contact lenses, HMO payments, health insurance premiums, long-term care expenses and prescription drugs.[8]

As observed by President and CEO of America's Health Insurance Plans (AHIP), Karen Ignagni, "[AHIP] expect[s] that the Health Savings Accounts (HSAs) Congress created . . . could provide even more choices and greater cost savings [than currently are available] for those individuals seeking affordable health insurance coverage in the individual marketplace."[9] Supporters are interested in expanding the HSA program. Nonetheless, HSAs are still in their first stage, and Congress and the Treasury Department will have to iron out a few wrinkles.

(2) Hospital Payment Policy

With hospital reimbursement rates set to expire in 2005, Congress is contemplating a comprehensive review of hospital payment policy as well as a review of the recently implemented one-year ban on construction of new specialty hospitals.

While hospitals have borne some of the costs of the uninsured, Congress is concerned that some non-profit hospitals are charging exorbitant rates to people who are uninsured. Legislation was introduced that would prohibit hospitals from charging uninsured individuals more than 125% of Medicare's full payment amount.[10] If passed, hospitals would have to charge fair prices for uninsured patients' hospital services and would face civil penalties upon charging prices in excess of the statutory limit.[11]

Much deliberation lies ahead, particularly as health care costs and the number of uninsured emergency room visits due to a lack of preventative care rise. Hospitals are currently discussing the matter more thoroughly with the Department of Health and Human Services.

(3) State High-Risk Pools

In 2002, Congress passed legislation that provides states with funding to establish and support high-risk pools, which cover individuals with pre-existing medical conditions who cannot pay for or find insurance coverage.[12]

Just this fall, the Senate Health, Education, Labor, and Pensions Committee approved legislation to increase available federal funding for state high-risk health insurance pools and extend the life of a high-risk pool grant program established in the Trade Act of 2002.[13] The legislation was introduced by Committee Chairman Judd Gregg (R-NH) and Sen. Max Baucus (D-MT), the ranking Democrat on the Senate Finance Committee. Recent Congressional action has focused on increasing and extending the existing federal grant program.

(4) Refundable Health Care Tax Credits

In 2002, refundable health care tax credits ("HCTCs") were established to assist displaced workers under the Trade Act.[14] Generally, if a worker loses her job because of foreign competition, the displaced worker is eligible for a 65% advanceable health insurance tax credit for COBRA, coverage under a spouse's employer-sponsored plan, individual health insurance, state purchasing pools and state high-risk pools.

(5) SCHIP Expansion

In an effort to make all uninsured children eligible for Medicaid or State Children's Health Insurance Programs (SCHIPs), SCHIP expansion legislation would improve outreach efforts as a means to increase program participation.[15] If passed, this legislation would increase federal financial support for the programs and prevent a state from excluding children who have access to coverage under a group health plan. As a result, states may be able to expand health insurance coverage to all uninsured children regardless of family income.

(6) COBRA Portability Reform

Within the last few months, legislation was introduced to amend the existing COBRA law by extending the time period in which COBRA may cover those uninsured individuals between jobs from 18 to 24 months.[16] Coverage options would likewise be expanded to include lower premiums and deductibles.

(7) Association Health Plans

Some policymakers tout Association-sponsored Health Plans ("AHPs") as a possible means of providing small business employees with more access to health care. Through AHPs, small employers could join together to purchase health insurance benefits for their employees at reduced costs. The U.S. Department of Labor would regulate and oversee AHPs, which would not be subject to varying state mandates, solvency standards and other consumer protection regulations.

Opponents, like Senator Judd Gregg, warn that the introduction of AHPs would create a system where insurers would be able to "cherry-pick participants who have only young, healthy employees. Businesses that tend to employ older workers or have employees with costly conditions would be forced to buy outside the AHP group."[17] Others fear insufficient oversight. In Washington, AHPs continue to be spiritedly debated.

(8) Deductions for Long-Term Care Insurance

Although similar measures have been unsuccessfully introduced in the past, consumers remain hopeful that legislation allowing tax deductions for premiums paid for long-term care (LTC) insurance will become a reality.[18] Such legislation would allow consumers to enjoy an above-the-line federal income tax deduction for premiums paid on LTC insurance and provide individuals with LTC needs a tax credit of up to $3,000.[19]

POSITIONS OF THE 2004 PRESIDENTIAL CANDIDATES[20]

Bush

- Supports providing tax credits and HSA contributions to low-income families and small employers to help individuals buy private insurance
- Proposes campaign to enroll children who are eligible, but not signed up, for Medicaid/SCHIP
- Supports establishing insurance pools and Association-sponsored Health Plans

- Supports expanding community and rural health centers
- Supports providing grants to states for state-run insurance pools

Kerry

- Supports providing tax credits to help individuals buy insurance
- Supports providing incentives to states for enrolling children in Medicaid
- Opposes Association Health Plan legislation
- Supports expanding public program coverage and ensuring that the federal government pays the costs of coverage for children enrolled in Medicaid
- Supports allowing all Americans to buy coverage through the "Congressional Health Plan" and providing incentives for low-income individuals who do so

CONCLUSION

The issue of how to provide health care to the uninsured is hot, ripe and unavoidable. Like it or not, health insurers will be affected by the actions Congress takes to counter this problem. Why not make the most of it? Momentum in Washington is already moving toward making insurance regulation more uniform – either through federal standards that would be enforced by the states or an optional federal charter. Federal action to help the uninsured and federal action to create more uniform insurance regulation could go hand in hand. Our advice to you is to get informed, examine your options and raise your visibility on this issue in Washington. Do not subject your company to the whims of policy makers and your competitors as Congress tackles what many people consider to be the most compelling public policy issue facing the country.

ENDNOTES

[1] Charlie Richardson and Scott Kosnoff co-chair the Insurance and Financial Services team at Baker & Daniels, working out of the firm's Washington, D.C. and Indianapolis offices, respectively.

[2] U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2003 (2004).

[3] Congressional Budget Office, Economic and Budget Issue Brief: How Many People Lack Health Insurance and for How Long? (May 12, 2003).

[4] *Id*.

[5] Congressional Budget Office, Economic and Budget Issue Brief: How Many People Lack Health Insurance and for How Long? (May 12, 2003).

[6] Robert Wood Johnson Foundation, Study Shows Millions of Working Americans Have No Health Coverage, Suffer Health Gaps as a Result (May 5, 2004).

[7] 26 U.S.C.A. § 223 (2004). In order to qualify as a high deductible health plan, individual polices must have a $1,000 minimum deductible and cannot exceed $5,000 in out of pocket expenses. Likewise, family policies must have a minimum deductible of $2,000 and out of pocket expenses cannot exceed $10,000. Under HSAs, individual and family policy holders can annually contribute and will be allowed a deduction for up to $2,250 and $4,500, respectively.

[8] Department of the Treasury, Internal Revenue Service, Medical and Dental Expenses (Including the Health Coverage Tax Credit) (2004).

[9] America's Health Insurance Plans, Individual Insurance Market Study Finds Americans Have Access to Affordable Individual Health Insurance (August 2, 2004).

[10] Hospital Billing Fairness Act, H.R. 4092, 108th Cong. (2004).

[11] *Id.* The Secretary of the Department of Health and Human Services would define how hospitals certify their fair billing practices.

[12] Trade Act, 116 Stat. 933, 107th Cong. (2002) (enacted).

[13] S. Res. 2283, 108th Cong. (2004).

[14] Trade Act, 116 Stat. 933, 107th Cong. (2002) (enacted).

[15] *See, e.g.,* Family Care Act, H.R. 4350, 108th Cong. (2004); SCHIP Expansion Act, S. 2420, 108th Cong. (2004).

[16] Health Care Assurance Act, S. 2570, 108th Cong. (2004).

[17] Bureau of National Affairs, BNA's Health Care Daily Report, Insurance Regulation: Sen. Gregg to Offer Alternative to Association Health Plan Bills (July 30, 2004) (quoting Senator Judd Gregg's letter to the *New Hampshire Union Leader*).

[18] One example of such legislation is the Health Credits Act, introduced in the House this year. H.R. 4886, 108th Cong. (2004).

[19] The Health Credits Act includes these provisions. *See, id.*

[20] Kaiser Family Foundation, Health Care & the 2004 Elections: Health Insurance Coverage for the Uninsured (2004).