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## States Eye Whether Mass. Health Cost Bill Is Tough Enough

By **Rachel Slajda**

Law360, New York (August 01, 2012, 5:40 PM ET) -- States will be watching closely to see whether Massachusetts' newly passed health care cost-cutting bill — touted as a potential model for the rest of the country — actually has enough enforcement power to get providers and insurers to lower their spending growth, experts say.

The bill, passed by the state legislature Tuesday and expected to be signed by Democratic Gov. Deval Patrick, creates several ways to reduce the rate of health care spending in the state. Notably, it sets a cap on how quickly spending by providers and insurers can grow, tied to the state economy, and establishes a new agency to oversee their progress. Legislators say the bill could save \$200 billion over 15 years.

Experts say it will be years before the measure's success can be determined. In the meantime, other states are watching closely to see what happens and, in particular, whether the law has enough power to keep health care spenders in check.

"One of the critiques is, 'Does this have enough teeth?'" said Carly Kelly, a health care analyst at Avalere Health.

Providers and insurers who exceed the spending growth targets will be required to create a "performance improvement plan" to bring their spending under control, a plan that will be overseen by the new Health Policy Commission. Although there are civil penalties for failing to create the plan, it's unclear whether there's any punishment for failing to stick to it, said Stephen Weiner, a Boston-based attorney who chairs the health law section at Mintz Levin Cohn Ferris Glovsky & Popeo PC.

"Are hospitals willing to proactively self-police themselves in setting their prices, so it doesn't trigger the need for all this oversight? If they can, maybe you wouldn't need stricter regulations," Kelly said. "You will need a few years to see that."

The growth target is set at the potential growth of the gross state product for the first five years, starting in 2013, then at half a percent less than GSP potential growth until 2022. After that, it's set back at GSP, but the legislature and the commission will have the authority to change that.

The bill also includes a range of other measures, including encouraging accountable care organizations and other models of coordinated care; directing state health programs, such as Medicaid, to begin moving away from the fee-for-service model; and creating a \$225 million fund, paid into by insurers and providers, that will be used for community hospitals, preventative health programs and electronic health records.

"I think the bill is a baby step in the right direction, but only time will tell if it will be successful in any significant way in moderating medical spending. Unless it works, it won't be a model for other states," said Nancy Turnbull, a senior lecturer on health policy at the Harvard School of Public Health.

"I share [the] concern about how well the spending targets will work, particularly with a relatively weak enforcement mechanism," she added. "But having targets is a good development and presumably the legislature can toughen the enforcement mechanism if the first ones aren't strong enough."

Even without sharper teeth, the law will create strong public pressure for providers and insurers to bring their spending growth in line, Weiner said.

"I think the expectation, and I agree with this, is [that] is the public identification [of health care costs], the oversight role of this new commission, the overall culture change, will be sufficient pressure for provider organizations," he said. "The important elements are that you have an agency in power to monitor, give it the resources to do so, have the data to do so and you have a collaborative relationship with the private sector."

The collaborative approach, in which providers work with the agency to bring down spending, will also be much more palatable to other states than a top-down, strict regulatory regime, he said.

"[The bill] would be a model that would be palatable in several states," he said.

Even Massachusetts, one of the most liberal states in the country and a leader in health care reform, apparently couldn't stomach a stricter approach, dropping a House bill that would have, for one, included a "luxury tax" against providers whose costs were too high.

On the federal level, it's unlikely Congress would adopt anything like the Massachusetts law, Kelly said. For one, it has echoes of the Medicare physician payment sustainable growth rate, wherein pay rates are tied to the growth of gross domestic product. Doctors and lawmakers have panned the SGR as a massive policy failure, and there have been frequent, if futile, efforts to repeal it.

And a stricter regulatory approach than the one Massachusetts adopted, like one proposed by the state House, "would just die," Weiner said. "No one would consider doing it outside of Massachusetts."

--Editing by Elizabeth Bowen and Richard McVay.

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