Massachusetts legislation promotes health care rationing

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This month the Massachusetts House and Senate put forth variations of a bill designed to increase the formation of accountable care organizations (ACOs) in the state, while hiding them behind a Trojan horse of caps on health care cost increases and additional aid to financially "distressed" hospitals.

The House bill focuses on requiring ACOs for health care providers receiving Medicaid funds, stipulating that 25 percent of state Medicaid enrollees must be covered by ACOs as of January 1, 2013 and 80 percent as of January 1, 2015.

Federal regulations developed by the Department of Health and Human Services in response to the Affordable Care Act already require the formation of ACOs by providers receiving Medicare funds.

Under the ACO model, cost savings are shared between insurance and health care providers. Thus, while current state and federal legislation focuses on Medicare and Medicaid, they will be used for the imposition of ACOs benefiting large private insurers. The federal HHS regulations go so far as to establish waivers of the antitrust laws for health care providers that form ACOs.

The Massachusetts bill is also part of a nationwide attack on the Medicaid program jointly administered by the federal government and the states. To that end, it limits the next increase in Medicaid reimbursement rates to 2 percent, scheduled to take effect on July 1, 2013.

Accountable care organizations are watered-down versions of the capitation payment model that Massachusetts tried to introduce in the 1990s. Under capitation, insurers pay providers a set amount per year for each patient. With ACOs, insurers and providers "reconcile" their actual and planned expenditures, and split the savings.

Unlike health maintenance organizations (HMOs), ACOs typically do not require that patients use specific doctors or providers. However, they will whittle away at the amount of care available, under the guise of cost "metrics" and "evidence-based medicine."

A November 4, 2011 memo to the Medical Group Management Association by its Washington Counsel says of ACOs that it is uncertain "whether this hybrid payment model—still based in fee-for-service but sharing some characteristics and incentives with managed care—will be an enduring part of the Medicare program, or simply a phase through which the program passes on the route to more fundamental payment reforms. One suspects that its longevity will be largely dependent on its ability to show savings for Medicare, and show then (sic) quickly."

The memo goes on to state that "additional flexibility to essentially negotiate collectively in the private insurance market may be a significant inducement for hospitals and non-hospital networks of providers to seek to participate in the ACO program."

It gloats over a revised HHS rule that eliminates antitrust review prior to the formation of a new ACO, along with "increased protection from anti-kickback, self-referral and beneficiary inducement laws." In other words, longstanding laws that protect consumers will not be allowed to get in the way of this payment model.

Massachusetts Governor Deval Patrick, a former Coca-Cola executive, acknowledged in remarks to hospital and insurance company executives that the profit system leads to such irrational policies. According to the *Boston Globe*, Patrick spoke after passage of the Senate bill: "I am a capitalist, but...the health care industry is most certainly not a perfectly rational market."

Executives of Partners HealthCare—an organization connected to Massachusetts General Hospital and Brigham and Women's Hospital—were more blunt. The *Globe* reported on a May 14 meeting in the office of House Speaker Robert DeLeo, in which Partners board chairman Jack Connors threatened job losses if DeLeo goes after the "golden goose." Both Mass General and Brigham and Women's are among the state's top employers.

Despite its "not-for-profit" legal status, Partners reported an investment loss of $3.79 million on its 2009 IRS filing. That same year, its president was paid nearly $1.3 million in total compensation, including nearly $200,000 toward his pension. At the May 14 meeting, John Sasso was among the Partners lobbyists. A longtime Democratic Party operative, Sasso has served on the presidential campaigns of Ted Kennedy, Mike Dukakis, and John Kerry.

According to the *Globe*, Massachusetts medical providers spent $9 million on lobbying the state legislature in 2011, with Partners spending $966,500.

The government, however, is caught between providers like Partners and groups like the Associated Industries of Massachusetts (AIM), which would be only too happy to pay less for insurance for workers at its member companies. AIM, which last year advocated the slashing of health care benefits for municipal employees to levels paid by private companies, urged the Senate to "be bold" about the new measures.

One result is guaranteed to come out of these sordid dealings: that workers will have less and less access to good quality health care, in a state with world-renowned hospitals.

In its coverage of the issue, the *Globe*, owned by the *New York Times* and traditionally considered Boston's "liberal" paper, deliberately obscured the imposition of ACOs. Instead, it presented the Massachusetts legislation as a progressive measure that will slow the inflation of health care costs and provide funding to hospitals that have traditionally served low-income populations.

Hospitals and other medical providers serving working-class cities expect to benefit from the new legislation, but will find themselves increasingly squeezed in the race to ration care. For example, the Cambridge Health Alliance—which used to receive significant amounts of aid from the state's free care pool because its Cambridge Hospital served many indigent patients—announced last August its "vision" of becoming an ACO. Its director of media relations declined a WSWS request for comment on the new legislation.

Similarly, the Massachusetts League of Community Health Centers, which includes providers in such working-class cities as Lawrence, Lynn, Brockton, Holyoke, and New Bedford, has issued a brief supporting key provisions of the law. In it, the league pleads for additional state funding while offering in return the savings it could generate for Medicaid and other insurers through reducing "avoidable, costly care."