



The Council for Affordable Health Insurance's GREAT STATE DEBATE *ON HEALTH CARE REFORM*

What's Fair about Fair Share?

Wal-Mart Bills Are Growing in Popularity and Intrusiveness

June 2006

Last January, the Maryland Legislature overrode Gov. Robert Ehrlich Jr.'s veto and passed what has come to be known as the "Wal-Mart bill." The "pay or play" legislation forces large companies — those with 10,000 employees or more — to spend up to 8 percent of their payroll providing health insurance, or pay the difference as a tax to the state. Non-profits have a lower spending requirement, 6 percent.

Politicians seeking to take credit for "doing something" about the uninsured have cynically proposed the legislation. While the goal to get more low-income workers covered with health insurance is laudable, the politicians force the private sector to pay for it.

Other states have been watching Maryland with keen interest and taking notes. But will the legislation actually reduce the number of uninsured? Will it have a negative impact on business? And is there a better way to solve that problem?

What Is the Wal-Mart Bill? Most Wal-Mart bills are introduced under the name of "Fair Share" legislation and target large companies. The definition of "large company" varies from state to state, as does the percentage of payroll (or in some cases, amount per hour) that a private company must spend providing health benefits. Fair Share legislation is always written to capture Wal-Mart — hence the reason it is known as the Wal-Mart bill.

Some groups, especially labor unions, have criticized the Wal-Mart company for not providing sufficient employee benefits. To rectify this, critics want the state government to establish minimum health insurance-spending standards for targeted large companies.

Generally, the proposals would require qualifying large employers not spending the state-prescribed minimum to pay a penalty to a newly created Fair Share health

care fund. The state then would use the companies' money to pay for state-provided health care services like Medicaid. Some proposals would require employers to pay their fines directly to the state Medicaid program.

Eligible employers would be required to file annual payroll and health-benefit spending reports to the state. The state bureaucracy would review the information to ensure compliance with the law and fine employers not meeting strict reporting deadlines.

The Goal of Wal-Mart Bills. Most Americans obtain health insurance from their employer. But rising health insurance costs have made it less affordable for employers to offer coverage, and for employees to accept it.

While most workers with access to employer-provided coverage take it or are insured through a working spouse:

- Some decline employer coverage and choose to be uninsured.
- Other low-income workers opt not to buy workplace coverage and enroll in Medicaid instead.

Wal-Mart is no different. Some of the company's workers chose coverage, some are uninsured, and some are Medicaid enrollees.

So why go after Wal-Mart? Wal-Mart is a large and profitable company with many opponents, including competing small businesses, community organizations and labor unions.

Fair Share is being sold to state legislators and the public as a no-cost (to the public, anyway) solution to reducing the number of uninsured and those on the Medicaid rolls while tapping into American anxiety about the growth of Wal-Mart. The goal of the legislation is to increase the number of Americans receiving employ-

ment-based health insurance by mandating employers spend more on health benefits.

Politicians often like to blame someone, usually a private sector company, when people make bad choices. In this case, it's Wal-Mart, the largest private employer in the United States. But is Wal-Mart the root of the problem?

Will Fair Share Solve the Problem of the Uninsured? The uninsured tend to be lower-income workers, young and healthy, but the demographics vary. Some are unemployed, some have jobs. Some work for big companies, some work for small ones. Let's look at Maryland to see what effect passing the Wal-Mart bill might have.

Fair Share affects few Maryland companies. The Washington Post recently reported that only Wal-Mart and three other employers, Northrop Grumman, Johns Hopkins University and Giant Supermarket, met the legislation's eligibility criteria. Only one company, Wal-Mart, did not meet the minimum health expenditure level — but not by much. In that state Wal-Mart currently spends about 7 percent of employee payroll on health benefits. That means that the company will need to increase its spending on health insurance benefits by one percentage point of payroll to comply with the law. That's it.

Of course, the vast majority of Maryland's uninsured population — 99 percent — does not work at Wal-Mart. Thus, Fair Share will not make health insurance more "accessible" for them. Wal-Mart isn't even Maryland's largest private employer. That distinction goes to Johns Hopkins University, which has a 25 percent lower spending mandate than Wal-Mart because it's a non-profit.

So, even after enacting the Wal-Mart bill, Maryland still has a long way to go if it wants to extend coverage to the uninsured. Instead of offering any substantive reform, the Wal-Mart bill's message to employers is "spend more money," which really isn't reform at all. However, the Wal-Mart bill can lead to other proposals, as Maryland businesses smaller than Wal-Mart discovered recently.

After the Wal-Mart bill's enactment, a similar bill targeting small businesses was introduced. Maryland's small-business community was largely silent during the debate on the Wal-Mart bill, and as a result a delegate introduced HB 1510, which imposes a mandate on

small businesses to provide health insurance. While this "Son of Wal-Mart" did not pass either legislative chamber before the Legislature adjourned its 2006 session, expect it to return in 2007. The precedent has been set.

How Are Other States Responding? Variations of the Wal-Mart bill have been introduced in about 30 states.

- In Rhode Island, HB 6917 mandates all employers with over 2,000 employees spend 8 percent of payroll on health benefits.
- In New Jersey, S 477 requires all employers with over 1,000 employees to spend \$3.30 in health benefits for each hour they work.
- New York may crack down on grocery stores. Two New York Wal-Mart bills, A 9776 and S 6472, mandate that grocers spend \$3 per hour on each employee's health benefits. The bills' authors defined eligible companies very creatively. Only large stores that "sell food for offsite consumption" are eligible. Again, as in Maryland, only a fraction of New York's uninsured work at Fair Share-eligible employers. (Over 2.7 million New Yorkers lack health insurance; Wal-Mart employs 34,000 in the state.)
- One city, Chicago, is considering mandating large (i.e., "big box," with at least 75,000 square feet) retailers like Wal-Mart to spend at least \$3 an hour per employee on health benefits, PLUS — and here is where Chicago wants to go Maryland one better — pay a "living wage" of at least \$10 an hour (the state minimum wage is \$6.50/hour).

Solutions that Work. Fair Share legislation targets Wal-Mart, but all employers are struggling with health insurance costs, and many besides Wal-Mart have both uninsured employees as well as employees on Medicaid. The primary problem is high health insurance costs. So the best solutions are those that lower the cost of health insurance and provide a subsidy for the lowest-income workers, not impose employer spending mandates.

But that fact also highlights a dirty little secret about health insurance: state mandates and regulations are two of the driving forces behind the high cost of insurance. Reduce or eliminate the mandates and regulations, and health insurance prices will fall while competition and choice rise. How can that be done?

- Allow individuals and small businesses to have access to mandate-free health insurance policies like many of their larger competitors do. While mandated benefits make a policy more comprehensive, they also make it more expensive. Indeed, Kentucky officials estimate that a new “mandate-lite” policy being sold in the state will cost about 10 to 11 percent less than one that includes all of the state mandates.
- Provide tax credits to the poor who purchase individual insurance.
- Repeal guaranteed issue in the individual markets. Kentucky, New Hampshire and Washington State destroyed their individual health insurance markets by imposing guaranteed issue in the mid-1990s. Only by repealing it were these states able to restore a functional individual health insurance market. And to ensure health insurance access for the sick, each created a high-risk pool.
- Most states have promoted Health Savings Accounts (HSAs) and passed legislation so that HSAs can meet federal tax deductibility guidelines. HSAs have proven to be popular with the uninsured. For example, a recent study from America’s Health Insurance Plans found that 37 percent of new HSA policyholders were previously uninsured. But some states still have to address this issue.

Conclusion. Wal-Mart bills will not solve the crisis of the uninsured and do very little to combat escalating Medicaid budgets. What they will do is subject a very few large private businesses to increased spending and continual health-benefits scrutiny from state legislatures. In short, there is nothing fair about Fair Share.

Fair Share’s extremely limited scope misses most of the problem it portends to address. If, as in Maryland, the one employer subject to the law is already meeting, or nearly meeting, the law’s requirements, then how many more people will become privately insured?

It is time for states to recognize that private sector business isn’t responsible for the uninsured, the cost of health insurance is. And that the states have played a large role in driving up those costs. Address *that* problem, and states will actually be doing something about the problem of the uninsured.

Variations of Fair Share Legislation

Maryland HB 1284/ S 790

Employers of 10,000 or more must spend 8 percent of payroll (6 percent if non-profit) on health care benefits

Maryland H 1510

Employers of fewer than 10,000 must spend 4.5 percent of payroll (3 percent if non-profit) on health care benefits

Chicago’s Living Wage and Wal-Mart Proposal

Employers must pay a living wage of \$10 an hour plus an additional \$3 per hour for health benefits.

Colorado HB 1316

Employers of 3,500 or more must spend 11 percent of payroll on health care benefits

New Jersey A 1705/ S 477

Employers of 10,000 or more must spend at least \$4.17 an hour on health care benefits

Wisconsin S 440

Employers of 10,000 or more must pay 80 percent of the employees’ premiums or pay a “cost incurred by society.”

Prepared by Adam Brackemyre, assistant director of government affairs, Council for Affordable Health Insurance.

Other CAHI state health reform publications available at www.cahi.org:

- * “Massachusetts’ Health Care Reform Plan: Too Many Sticks; Not Enough Carrots,” by JP Wieske
 - * Issues and Answers #135 “The Pitfalls of Mandating Insurance,” by Greg Scandlen
 - * Issues and Answers #134 “Healthy New York: A Poor Way to Fix a Dysfunctional Insurance Market,” by JP Wieske
 - * Issues and Answers #132 “Dirigo Health: A Series of Broken Promises,” by Adam Brackemyre and Tarren Bragdon
 - * “Health Insurance Mandates in the States 2006” by Victoria Craig Bunce, JP Wieske and Vlasta Prikazsky
-



Copyright © 2006.
The Council for Affordable Health Insurance

All rights reserved.
Reproduction or distribution without the express consent of CAHI is prohibited.

127 S. Peyton Street, Suite 210
Alexandria, VA 22314
www.cahi.org

For additional information please contact the Council for Affordable Health Insurance at 703/836-6200 or by email at publications@cahi.org