Bills to mandate companies provide health care for their employees have been brought before legislatures in 30 states. Supporters of such laws say when employers, like Wal-Mart, provide health insurance for their employees, states will save money on Medicaid spending. Opponents say the real problem is the cost of health care in the country.

By Laura Coleman
Sixty-one percent of Americans with health insurance receive it as an employee benefit. To offset state costs for providing health care for the uninsured, some states have proposed bills requiring employers to provide health insurance.

Maryland’s Fair Share Health Care Fund Act places employers’ roles in providing health care coverage directly on lawmakers’ radars. The law requires companies with more than 10,000 employees either to spend at least 8 percent of their payrolls on health benefits or place the money directly into the state’s program for the poor. The only company affected in Maryland—and in other states proposing similar bills—is Wal-Mart.

The rising cost of providing health care for the uninsured has become a serious drain on state budgets. According to the Centers for Medicare and Medicaid Services, Medicaid, the single-largest area of government spending, will continue to grow faster than the overall economy for the foreseeable future. It will rise at an average annual rate of 8.6 percent for the nation as a whole from 2006 to 2014—3.6 percentage points faster annually than projected economic growth.

However, some economists believe mandating that large employers provide health benefits only shifts economic burdens from Medicaid to the general fund, due to potential drops in wages—taxable income—that could result.

A Word from Industry Leaders

Wal-Mart, which in 2005 was America’s largest employer, reported $16.86 billion in sales for the four-week period ending April 28. The corporation employs about 1.8 million people and

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—Paul Kelly, Retail Industry Leaders Association
boasts saving working families $2,329 per year in low-priced merchandise. Forty-seven percent of Wal-Mart associates are covered by employer health insurance, 20 percent fewer people than the national average.

Naomi Walker, director of the State Legislative Program for the AFL-CIO, however, is adamant that bills like Maryland's are not targeted at the retail giant. "We don't call it the Wal-Mart bill," said Walker. "They are one of the biggest offenders, but they are not the only large employer that fails to provide adequate health care benefits for its employees."

A health care backgrounder from the United Food and Commercial Workers' (UFCW) Web site indicates that more than 60 percent of Wal-Mart employees—600,000 people—are forced to get health insurance coverage either from the government or through their spouses' plans.

Paul Kelly, senior vice president of Federal and State Government Affairs for the Retail Industry Leaders Association, thinks state health care mandates only mask the real problem—the rising cost of health care.

"We are uniformly opposed to these kinds of state mandates principally because we believe as large multi-state employers they need and should continue to have the flexibility to design health benefits to meet the needs of their employees," said Kelly.

"When state governments mandate, that reduces flexibility. "We are committed as an association and an industry to work with lawmakers at every level to bring down health care costs. It is difficult for individuals to afford insurance, but not because of anything retailers have done," he said.

RILA, whose members include Wal-Mart, Best Buy, Lowe's and Home Depot and their suppliers, testified against the Maryland bill in April 2005. The organization advised the state to bring down costs so employers could afford to provide better benefits.

But Walker said historically large employers overwhelmingly provided health care for their workers. That number, however, is decreasing. And with profits of approximately $11 billion annually, said Walker, Wal-Mart "shouldn't be allowed to force state governments and taxpayers to pick up their health care."

Walker said the Health Care Disclosure Act, sponsored by the AFL-CIO and enacted in three states, would require states to collect and disclose names of companies whose workers are forced to rely on publicly funded health care. Twenty-three states have released company names—Wal-Mart tops the list in at least 19 states. The AFL-CIO says in this way, Wal-Mart directly contributes to the nation's Medicaid crisis.

But Aaron Yelowitz, associate professor of economics at the University of Kentucky, noted that Wal-Mart does offer health insurance to its employees. "The thing that most people note is that Wal-Mart has the most people who have dependents on Medicaid, but it is also the largest company in the U.S.,” he said. "In the Maryland contexts, Wal-Mart approximately pays between 7 and 7.5 percent of payroll of health care expenses already."

AFL-CIO President John Sweeney wrote in The Washington Post in January 2006 that “Wal-Mart complains that it’s being singled out in Maryland, but Wal-Mart isn’t the only company affected by the Fair Share Health Care bill. It’s just the only company that thinks its workers don’t deserve any better.”

Michael Wilson, the international vice president of the UFCW, agrees. “The problem for Wal-Mart is that because of the size of their company and their own employees that are on state health care plans, they come up at the top of the list in every state,” he said. “These bills are not targeted at Wal-Mart, but because they use this subsidy so much, they get blamed for the problem that exists.”

Economically Speaking

Kelly said health insurance premiums rose 9 percent last year and are expected to rise 10 percent this year. “America spends 16 percent of GDP on health insurance,” said Kelly. “This is unsustainable and will bankrupt industry.

“The issue is cost and we said that over and over again. Bring down costs to afford better benefits. These bills allow lawmakers to say they’ve done something about health care without addressing costs, and allow lawmakers to say they’ve done something on health care when they have really done nothing,” he said.

Yelowitz found from his previous work that if legislation is passed in several states, Medicaid spending would fall somewhat. But he also offers this example: “The federal government pays $3 for every $1 the state pays in Kentucky,” he said. “Imagine that we shift one person from Medicaid to Wal-Mart.

In Kentucky, $2,000 would be shifted to Wal-Mart instead of Medicaid. Kentucky saves $500 of those $2,000 and the federal government saves $1,500. When people talk about saving Medicaid dollars, the federal government is paying.”

In the same research, Yelowitz found that in places where employer participation in providing health care is mandated, wages are likely to fall or not grow quickly. “Imagine that I made you pay $1 for health insurance,” he said. “Health insurance we don’t collect state income taxes on, but wages we do. That offsets the savings to the Medicaid program.”

Fair Share Across the Nation?

Industry representatives on both sides have differing views of whether fair share employer mandates will become the rule rather than the exception.

Kelly said the legislation lacked momentum in most states. “There is active legislation in New York and Rhode Island, but at this point it would appear that lawmakers have figured out that this is not the best course of action.”

Employer health care mandate proposals have been brought before legislatures in 30 states. The stipulations of the bills differ, and range from affecting companies with 100 to 10,000 employees. Check out states considering these proposals at http://www.restaurant.org/government/state/healthcare/bills_mandates.cfm.
Kelly also said from a legal standpoint, it is obvious to RILA that these proposals violate the Employee Retirement Income Security Act of 1974 (ERISA), which states that the federal government sets minimum standards for voluntarily established pension and health plans in private industry.

“ERISA basically says that if you are a multi-state employer and you self-fund your health benefits program, that program is governed by federal law, not state or local laws,” said Kelly. “This is grounds for a lawsuit with the state of Maryland.”

Wilson said most state officeholders with whom UFCW has spoken think it’s unfair for them to have to subsidize health care coverage for profitable corporations. “I don’t think these bills are ways to avoid the real issue,” he said. “There are ongoing efforts to improve health care access and quality. We need a fundamental change in health care, but there is no reason for states and employers not to take small steps to save on costs and deal with issues of quality and access.”

To economist Yelowitz, however, that fundamental change does not necessarily involve health care mandates.

“First and foremost, these mandates could have serious effects on the labor market,” said Yelowitz. “The way it is often portrayed is that it’s a very small and incremental step. In Maryland, it was pretty small. The thing is that some states take Maryland’s legislation and massively expand it to firms that have 100 employees, like California’s pay or play mandate. What starts out as only Wal-Mart rapidly could devolve to other employers.”

Yelowitz said economists think of things differently from politicians. “Economists worry about if positives outweigh negatives,” he said, “and not about who wins or loses. Three thousand dollars more in health care doesn’t account for not getting a $3,000 increase in salary. So you haven’t really won.”

Yelowitz said individual mandates, like the one passed in Maryland in April, are not a crazy option. He said the largest group of uninsured people is the 23- to 29-year-old demographic, and those individuals would not be too expensive to insure.

“Mandates like that along with tax credits would be a way toward making a dent in the uninsured,” said Yelowitz. “It could document dramatic drops in the uninsured, but is not that expensive. If I were a governor running for re-election, I would do that.”

—Laura Coleman is associate editor of State News magazine.