

What the IRS Might Learn From Massachusetts's Mandated Healthcare Plan

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If the nation's tax-collecting agency ends up administering a health insurance mandate like the one in the emerging Senate healthcare reform bill, the IRS might do well to study the experience of the Massachusetts Department of Revenue.

The Affordable Health Choices Act, which cleared the Senate Health, Education, Labor and Pensions Committee on July 15, would mandate that all Americans carry health insurance. (For the bill, see *Doc 2009-15172* or *2009 TNT 126-66*.) The House has introduced its own healthcare reform bill. Because an analogous mandate was enacted in Massachusetts in 2006, Tax Analysts approached the state's revenue officials and some IRS watchers for their reflections on what the IRS might do to handle a first-of-its-kind nationwide mandate.

Massachusetts Revenue Department Commissioner Navjeet Bal said the IRS should first consider "the importance of creating a system that isn't disruptive -- or is minimally disruptive -- to taxpayers and preparers as well as the taxing agency."

The mandate administered through the Massachusetts taxing agency is set up so that individuals who fail to obtain insurance and do not qualify for an exemption are charged a fine determined through a worksheet that comes with their tax return. Individuals 18 years and older must file, along with their tax return, the health insurance declaration Schedule HC, and the Revenue Department is responsible for reconciling the information provided by individuals against monthly client coverage reports submitted by the insurance companies.

The department also sends appeals-related notices to taxpayers and maintains an appeals database shared with the Commonwealth Connector, a state agency that helps individuals find appropriate insurance and that handles appeals.

Also, the department's enforcement division is constantly adding to and maintaining a data warehouse, using electronic tools to assess and locate qualified individuals who fail to file or who underreport their tax obligations.

Despite the significant capabilities demanded by the program, "we didn't receive any additional funding to support the implementation of the mandate," said Melissa Cummings-Niedzwiecki, the Revenue Department's director of strategy and implementation. "We used existing resources and existing systems. The only funding we did receive was for postage for the two series of postcards that we sent out."

Asked how much it costs to administer the program, Bal said the agency did not perform separate cost accounting for the health insurance mandate. When pressed on

whether administering such a large program had stretched the agency's resources or caused other programs to suffer as resources were diverted, Bal said, "We really did absorb this, not without some pain and concern about exactly what you're alluding to, especially when we were first implementing it and getting ready for the first filing season."

Administering the insurance mandate required a significant upfront outlay of resources. Most visibly, Bal said, the Revenue Department created the new Schedule HC and Form 1099-HC; set up an electronic database to receive coverage reports from insurers and to reconcile those against individual filings; acquired a computer system that receives and shares appeals documentation with the Commonwealth Connector; and performed specialized training for some customer service employees. The agency also had to ensure that its return preparation software providers had the new Schedule HC properly loaded into their programs.

"One of the strengths of Massachusetts health reform was that everyone was at the table," Bal said, attributing the department's apparent success to the "broad-based effort" that included the administration at the time, then-Gov. Mitt Romney, the legislature, the department, the Commonwealth Connector, healthcare advocates, and the health insurance providers, which she said "were a big partner for us in this effort."

"This is not something that should be done in isolation," said Cummings-Niedzwiecki. "It really does require a large group of stakeholders."

The input of those stakeholders can be invaluable, she said, adding, "We had never really worked with [healthcare] advocates before. They were quite helpful to have at the table. Since we were starting with a low number of uninsured, our focus was on the insured and how to get them through the system as quickly as possible. The advocates helped get us focused on those that were uninsured and on how they would be treated."

Insurer Collaboration and Public Awareness

Close collaboration with insurance carriers helped the Revenue Department overcome its biggest challenge, which was how to verify individual claims of health insurance, according to Bal. Many insurers are moving away from using Social Security numbers to identify their clients, and the practice is prohibited or restricted in many states, the department was told. Thus the officials decided to create a discrete form taxpayers would have to file along with their tax returns.

"We worked very closely with the insurance carriers," Cummings-Niedzwiecki said, "and we produced a standard report that they have to use to submit the data to us, so all [the reports] come in the same way." The department also standardized the forms that the insurance providers must furnish to their clients specifying the information individuals need to complete their tax returns.

The second biggest challenge was the public's widespread ignorance of the requirement. Even before the mandate went into effect, 93 percent of Massachusetts's 3.4 million tax return filers were insured. But the Revenue Department's focus group research revealed that two months after the mandate became law, most residents did

not know they would be required to file documentation proving coverage, Cummings-Niedzwiecki said.

The agency's outreach efforts included creating a video tutorial to help taxpayers answer the health insurance questions on their tax return; conducting educational sessions with return preparers; creating a dedicated healthcare section on the Revenue Department Web site; producing an educational leaflet that department auditors distributed to employers; and executing an awareness campaign that included mailing more than 3 million postcards to taxpayers, Cummings-Niedzwiecki said.

The greatest resource that allowed the Revenue Department to mitigate those challenges, said Bal, was the 18 months of lead time to prepare it to administer the law.

National Taxpayer Advocate Nina Olson told Tax Analysts she agrees that lead time is crucial to any program's success. "When the IRS is asked to deal with late-year tax law changes, when it doesn't have 18 months to prepare, then what it does end up doing is taking people off of core programs that we have already identified as needing fixes and putting them on this new initiative. That's exactly the kind of thing we want to avoid," Olson said.

Successful administration of the program also relied heavily on the modern technological solutions the Massachusetts department had in place, officials said. That readiness allowed it to complete a three-step reconciliation process, share data and documents with the Commonwealth Connector, and update taxpayer accounts daily.

Olson said that although the IRS's own modernized technology plan has been put on hold while the Service revises its modernization strategy, the IRS already has in place adequate systems to administer a health insurance mandate.

"We delivered the economic stimulus program and got information from two very different systems -- Social Security and the [Veterans Administration] -- and were able to reconcile that information, get it into our system, and get checks out to people," Olson said. "We are right now administering the health coverage tax credit. It's a very small population, but it doesn't matter what the population is; the work has to be done to design that. For a lot of the work, we're using an independent contractor. But systems can be dealt with to do that, whether it's the IRS's own systems or you use somebody else who has the capability to do it -- a contractor with all the [section] 6103 protections -- to just process the stuff."

In the two years since the mandate was enacted, Bal said, administering the program has become more routine.

Because the health insurance penalty is treated like a tax, said Cummings-Niedzwiecki, "we have our existing enforcement and administrative powers to collect the healthcare penalty like we do any other tax."

Could the IRS Enforce the Mandate?

Although collection is one of the IRS's core missions, whether the Service could effectively enforce a national health insurance mandate is to many observers an open question. "The IRS has trouble even collecting a few hundred dollars from many individuals at the end of the year," C. Eugene Steuerle, former Treasury deputy assistant secretary for tax analysis and vice president of the Peter G. Peterson Foundation, wrote in a recent article on the foundation's Web site. "Does anyone really think it or some other enforcement agency can run around and collect huge sums of money from those who don't buy insurance?"

"You have to think about what's administrable in the context of a mandate," Steuerle said. He proposed an alternative scheme that would incorporate a system of sticks and carrots to encourage favorable taxpayer behavior.

The Massachusetts Department of Revenue offered additional advice on enforcement issues.

"Be generous and flexible in the enforcement of the mandate while still maintaining the integrity of the mandate," said Cummings-Niedzwiecki. "We were flexible on a number of counts. For people who are below 150 percent of the federal poverty level, there is no penalty. In 2008 we extended the lapse period from two to three months, recognizing the economy and that people would be in between jobs." She added that the penalty schedule was scaled to account for the age and income level of the offending taxpayer.

Olson raised additional issues. "When I hear [about] something being a tax penalty, it raises all sorts of procedural questions to me. If someone doesn't list insurance on their return, do they get deficiency procedures? Do they get to go to tax court? Or do we say to them, 'This is an automatic assessment, and you don't have any appeal rights'?"

She added: "If they owe it and they can't pay it, do they get collection due process rights? Do we file a federal tax lien against someone for a penalty for a failure to get health insurance?"

Olson said that all of those questions are "answerable, but they're often not answered before we've gotten the mandate to do them, and then we're scrambling around either to get technical corrections or having counsel opinions on the run because suddenly issues have shown up that we haven't had a chance to think about in the design process."

To Olson, design is key. "If you designed the program in a certain way, you might not have some of the problems that arise if you designed it in another way," she said, adding that even if Congress "wanted to design it in that more problematic way, at least let [the IRS] identify in advance what some of the problems might be so that we can address them ahead of time to minimize the difficulty both for the taxpayer and the IRS."

Massachusetts officials agreed that design is paramount. As Cummings-Niedzwiecki put it, "Keep it simple."