The Once and Future Law – Learning from Massachusetts' Cost Containment Efforts

By Adam V. Russo, Esq.

The election is over. For most of us that means a return to the status quo. We get up in the morning, we go to work, and we look forward to dealing with healthcare reform. Speaking of The Patient Protection and Affordable Care Act ("PPACA"), if you think that you've seen a lot of regulation over the past years... well... "you ain't seen nothin' yet!" As a proud resident of Massachusetts, I can say that with confidence.

While many in our industry have postponed taking substantive action to comply with PPACA, waiting to see if it would stick... the regulators in D.C. have been holding back as well. They have been lying in ambush, awaiting the outcome of the election. Now that we (and they) know who is in charge, and that healthcare reform is indeed the law of the land, the sheer volume of regulation that "will be coming to a plan near you," is going to reach astronomical levels. Furthermore, if we don't implement some provider-focused cost containment rules, nothing will be fixed by the current legislation. How do I know these things? I'm a "Bay-Stater;" (a lifelong resident of Massachusetts).

Folks like me, living here in Massachusetts, are experienced veterans when it comes to health care reform. We've survived our own mandate and regulations. Most importantly; we already know what works and what doesn't.

Massachusetts was a very popular state in the media these past couple years, not only due to our State based health reform, but also because it's father - our former governor - Mitt Romney (unsuccessfully) made his run for the presidency. President Obama's health care reform was therefore, naturally compared to the Bay State model. After all; how could we allow Mitt to get away with criticizing Obamacare when it was so similar to his own Romneycare? And that, of course, is the crux of my article. Regardless of what you may have been told, Obamacare was based on the framework first created in the guise of Romneycare. While they are not exactly the same, there are many similarities. I am not an artist (though my wife is), but I have learned how to identify a Picasso painting when I see one! While none are exactly the same, they do share similar characteristics - like the two plans.

Regarding the Massachusetts healthcare program; there were two main goals involved - achieving universal coverage and controlling the ever rising cost of care.

What the state saw between 2006 and 2010, despite a rise in uninsured individuals nationwide (17% to 18.5%), was a decrease in the proportion of uninsured residents, (10.9% to 6.3%) during the same time. I am proud of the fact that almost of our residents have health insurance; challenge number one was certainly met. But what about challenge number two? Without addressing the actual cost of care and issues involving access, this was just shifting the burden.

By failing to address the source of care being purchased by these newly insured people, we not only failed to deal with the main issue (the high costs), but we made things worse. With an influx of newly insured people, individuals that in the past would have been more conservative in seeking care had less reason to postpone doctor's visits. Unfortunately, many appointments were made without real cause. This up-tick in unnecessary appointments, which increased once the consumer viewed it as a freebie, resulted in a logjam. Some providers were so fed up with the program, they wouldn't treat individuals enrolled in one of the plans that comprised it. Others simply couldn't find enough time in the day to see everyone. As I love to say when I speak to people about this topic "everyone had a Ferrari sitting in their driveway but nobody actually had the keys to drive it." This resulted, then, in longer waits for everyone (including people needing care), and increased expenditures by providers to keep up with the higher demand. This in turn resulted in... you guessed it... higher prices. Strike 1.

Take note; the Massachusetts "connector plan," aka "Romneycare," aka "Commonwealth Care," is comprised of private carriers. To participate, each carrier must offer low cost policies that mean standards set by the state. These policies must offer certain mandated benefits, and cannot charge more than a capped premium. In the first year, the essential health benefits were limited in scope, making the program financially viable. Each year, however, lobbyists and special interests groups demanded that their "essential health benefits" be mandated from all participating policies. Carriers thereby found themselves being required to offer more, and thus raising costs. Strike 2.

Finally, nothing promoted consumer awareness, price transparency, or forced patients to have some skin in the game. There was no reason to seek the best price, only the most convenient option. Providers thus were incentivized by this new source of revenue to raise their already excessive prices. Strike 3, we're out!

In my humble opinion, this history of the Massachusetts' health care system should serve as a crystal ball for the nation. More importantly, it should serve as an example. We are only now seeing a second wave of legislation, this time dealing with the actual cost of care. It took my state six years to figure out that you cannot give access to care to all residents without addressing the cost as well.

From 1998 through 2009, Massachusetts had the highest personal health care spending per capita of any state. It wasn't until in Massachusetts, when everyone became insured, that we realized having insurance doesn't make healthcare any cheaper. Suddenly, the attention shifted from the payer to the payee.

In Massachusetts, as we started spending tax dollars, attention shifted to the actual cost of care. In 2010, the state attorney general documented wide variations in prices for health care services. It was possible that the same procedure at two hospitals (across

the street from each other in Boston) could have a substantial variance in price. Yes; this came as a surprise to most.

In response to this "outrageous, unfettered pricing," as the legislative session ended on July 31, 2012, the House and Senate resolved their differences and approved a new law that Governor Deval Patrick signed on August 6, 2012.

The new law establishes a health policy commission that acts as an independent public entity to oversee cost growth targets and monitors new payment models. It creates a special commission to report on variations in provider prices and the attorney general will have increased authority to investigate potential anticompetitive practices of health care organizations.

The law addresses medical malpractice with a 182 day cooling off period before patients can file a lawsuit, and makes providers' apologies to patients inadmissible in malpractice proceedings. The cooling off period is designed to allow time to negotiate settlements, and a health care professional can admit an error and offer compensation to a patient without the apology being used in court as an admission of liability.

The new law authorizes $60 million over 4 years for wellness and preventive health programs and an annual tax credit up to $10,000 for businesses that create workplace wellness programs. Although we already have a great wellness program in place at my firm, we will now expand it based on this added incentive. I think it's almost amusing to see that many of these "new" ideas for my state are things the self insured world has been doing for years. But as they say, better late than never!

The attorney general will have increased authority to investigate potential anticompetitive practices of health care organizations. The attorney general will realize that the main reason for higher health insurance premiums is not greedy insurers but providers attempting to take advantage of the current system in place. Massachusetts is one of the first states to create a payer claims database to monitor and report on variations in payments and the volume of services across health care organizations.

The law creates a Special Commission on Price Variation to review variation in prices among providers, recommend steps to reduce provider price variation and recommend the maximum reasonable adjustment to a commercial insurer's median rate for individual services or groups of services for each acceptable factor, by Jan. 1, 2014.

Every day I personally experience the greatest issues with our current health care and insurance systems. The biggest driver of rising health care costs is that the prices negotiated and paid are due to the market leverage of providers rather than the quality of services offered. The hospitals know whether there are any other options in a particular area and take advantage of that fact. This new law establishes additional tools to scrutinize market behavior, allows us to monitor market activity, and take necessary actions.

Finding new ways to deal with the problems created by dominant providers will be especially challenging for my state and the nation as a whole. In all fairness, it's a testament to the state's leaders that any law passed at all. Massachusetts was disadvantaged to take on costs, with health spending that is among the highest in the country, expensive medical practices, and very politically powerful hospitals and doctors. Health care is also one of the state's largest employers.

The main factor that forced this action was the realization that the broad coverage gains that Massachusetts has made would not be possible without finally controlling health care costs. Time will tell whether Massachusetts is ultimately successful at cost control but we will all learn a lot over the next few years, much of which will no doubt be useful to other states.

So while it is nice to see that my state finally addressed the real issue with health care, it's sad to see that from a national standpoint nothing is being done. While the rest of the nation has watched the Massachusetts model for many years, it seems that the federal government hasn't learned anything from us.

Two things stand out in my mind when it comes to PPACA. First, that the Obama Administration didn't learn from Massachusetts, and second, that they didn't put into place any of the cost containment measures that our very Democratic state passed.

This is proof-positive that we can't rely on the government to fix our problems.

My sister lives in Barcelona, Spain, where everyone gets free health care. Yet, she pays for private coverage as well. I asked her why she has her own private insurance through her employer. She simply responded that she didn't want to wait months for treatment or wait in long lines at state facilities. When she injured herself this summer, I was amazed at how quickly she was able to see her doctor. She simply called the number on her ID card, spoke to a nurse immediately, and was seen at a private clinic within minutes. I have yet to see that type of care here in the states. In my eyes the more the government gets involved in health care, the more opportunities we will all have to secure amazing options for the private sector.

In the face of rising costs and PPACA, we are seeing more and more plan sponsors, carriers, and brokers across the country assessing the situation, and looking at self funding as an option to avoid the status quo. More employers are beginning to see that the net cost to their plans is what needs to be looked at. There is now an increased pressure on benefit plans to control premium growth from plan sponsors, brokers, plan participants, the government, and stop-loss carriers.

The great news is that more and more individuals in our industry are looking at new and innovative ways to reduce the cost of care for their plans without reducing the benefits given to plan members. The problem is that there are many options out there that are not fully vetted prior to being implemented by plans and TPAs; leading to bad results and horrible precedent being set. If you follow a well designed game plan, everyone involved in the self funded arena can win, regardless of when the federal government mimics what Massachusetts did this summer.