



# Update

December 12, 2007



## States move forward with health care reform measures

State health care reform activities were brisk in 2007 and are likely to remain so in 2008. A handful of states are implementing broad reform initiatives, and others have contemplated similarly broad measures or enacted more discrete ones. While some states focused on Medicaid and other public programs, others turned their attention to employers – even those that sponsor self-insured benefit plans - as part of their strategy to extend coverage and control health care costs. Details vary, but many states have looked to common approaches. This *Update* highlights some of those activities.

### Broad state health care reforms in 2007

Maine, Massachusetts and Vermont in 2007 continued implementing broad reform measures that affect employers. Faced with burgeoning uninsured populations and a lack of federal reforms, other states issued reform proposals at a rapid clip. Many measures involve employers, even those that sponsor self-insured benefit plans. So-called “play-or-pay” notions, in which employers would spend a certain percentage of payroll on health care or pay into a state fund, showed up in several state reform proposals. Cafeteria plan requirements, Connector or Exchange agencies, individual coverage mandates, and measures extending dependent eligibility also were popular, while interest in “fair share” approaches aimed at the largest employers waned. Multistate employers face particular challenges in keeping up with these developments, and won’t necessarily be shielded by ERISA.

**Employer play-or-pay.** A number of states considered proposals to require employers either to provide a certain level of coverage or spend a certain amount of payroll on health benefits. Employers that don’t comply would have to pay into a state fund. Massachusetts enacted this approach in 2006, requiring employers with 11 or more employees working in the state to pay a “fair share contribution” if they don’t enroll enough full-time workers in employer-subsidized health coverage or contribute enough to the cost of that

## Does ERISA preempt state health reform laws?

ERISA generally preempts state laws that relate to employee benefit plans, though it doesn't preempt state insurance laws, such as extended eligibility for unmarried children under insured plans or HMOs. Employers and other parties could challenge broad state health reform laws, arguing they are preempted by ERISA. Employers with operations in more than one state, especially those with generous health benefit programs, may be concerned about the prospect of complying with varying requirements under numerous state laws, including state-specific rules on data collection and reporting.

While federal courts have found ERISA preempts Maryland's fair-share law and a similar local law in New York, ERISA challenges have not yet been filed challenging health reform requirements in Massachusetts, Vermont, or Maine. Employer challenges might focus on a law's funding or coverage mandates.

States would likely argue that ERISA doesn't preempt play-or-pay laws like Massachusetts's because employers can choose to provide any benefits they like or to pay a tax. In addition, section 125 cafeteria plans allowing pretax payment of premiums are not generally ERISA plans, so states could argue preemption doesn't apply to those provisions either.

Ultimately, only the courts can decide whether a particular state's reforms are preempted, but such answers aren't likely any time soon.

coverage. In Vermont, employers with more than eight full-time equivalent employees working in the state must now report information on their employees and make quarterly funding payments to the state under a 2006 reform law. And San Francisco enacted a health care security ordinance that is currently under legal challenge. The ordinance requires employers with 20 or more total employees (50 or more if non-profit), regardless of where they work or live, to meet an employer spending requirement or pay into a city fund.

**Section 125 cafeteria plans.** Several states now mandate that employers have cafeteria plans allowing employees to pay health insurance premiums with pretax dollars. This effectively lowers the cost of coverage and arguably makes it more affordable, especially for people who are now uninsured. But the mandates differ from state to state in terms of the types of employers affected – by size, insured or self-insured status, and in-state or out-of-state headquarters location – and the types of coverage employees must be able to buy through a cafeteria plan. (For more information on state-level Section 125 cafeteria plan requirements, see [Update](#), 11/7/07).

**Connector or Exchange agencies.** Another common approach borrowed from Massachusetts calls for establishing state agencies, dubbed Connectors or Exchanges, to give access to affordable health insurance, often for uninsured individuals and small businesses. The agencies would typically set minimum plan designs and facilitate premium payments. Massachusetts has established these agencies, which also run subsidized insurance programs for low-income workers not eligible for Medicaid. While administrative burdens could increase for employers, broader access to coverage through a Connector or Exchange could help some groups get coverage, particularly small groups, pre-65 retirees and uncovered employees.

**Individual coverage mandates.** Some states see requiring every resident to have health insurance, at specified levels of coverage and cost, as a key to achieving universal coverage. Residents that don't would face penalties. Massachusetts is the only state to adopt an individual coverage mandate so far, but other states' proposals have included it.

**Extended dependent eligibility.** Many states have looked to broadening insurance and HMO coverage by extending the age of unmarried children entitled to coverage. Some states passed their extensions as stand-alone measures, while others included them in broad health care reforms. Most states that have extended dependent eligibility have done so for unmarried children up to age 24 or 25, though some state mandates reach as high as age 26 or 30. In addition, some states have mandated coverage of domestic partners in insurance and HMO coverage (see [Update](#), 6/7/07).



## For more information

For additional information, please contact your Mercer consultant.

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**Fair share.** Few states in 2007 considered “fair share” measures that would require very large employers to spend a certain percentage of payroll on employee health coverage or pay the state the difference to help the state pay for uncompensated care. Maryland enacted a fair share law, but early in 2007 a federal appeals court found it preempted by ERISA. A New York court followed suit by finding that ERISA preempts a similar local law.

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