

News Release

For Immediate Release

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MTF Report: Expanded Health Plan Liability -- Costly for Employers and Taxpayers

Proposed legislation to expand the legal liability of HMOs would cost Massachusetts employers and taxpayers between \$138 million and \$563 million annually, according to a report released today by the Massachusetts Taxpayers Foundation.

In preparing the report, MTF analyzed over a dozen cost studies of similar health plan liability legislation in other states and at the federal level, including estimates prepared by the Congressional Budget Office and a variety of national consulting organizations. Using these studies the Foundation identified the likely percentage impact on premiums of the proposed Massachusetts legislation -- expressed as a range -- and calculated dollar impacts based on current HMO premium costs.

According to the MTF report, *Expanded Health Plan Liability: Undercuts Key Managed Care Reform, Costly for Taxpayers and Employers*, most of the additional costs -- between \$117 million and \$476 million annually -- would be borne by private employers who provide managed care coverage and by their employees who pay a portion of the premiums. Taxpayers would also bear additional costs -- between \$21 million and \$87 million a year -- for managed care coverage for Medicaid recipients and for state and local government employees.

"The bills being considered on Beacon Hill would lead to costly suits against HMOs and undermine last year's patients' rights reforms while doing little or nothing to improve the quality of health care in the state," said MTF President Michael J. Widmer.

Because of the sweeping nature of the proposed legislation (S.1813 and H.3377), the Foundation's cost estimates are almost certainly conservative. A series of provisions in the bills are -- in combination -- much broader than the liability legislation adopted elsewhere in the country, opening the door to a wide range of costly new litigation and threatening to make managed care plans a party to virtually every medical malpractice lawsuit in the state.

Unlike the liability legislation enacted in other states, the Massachusetts proposals would not require individuals to exhaust internal or external reviews before initiating a lawsuit, driving up costs and undercutting a key element of the managed care reforms adopted last year. Other provisions of the bills would:

- Define potential liability broadly to include not only HMOs and managed care plans but also *any* entity which assumes risk for health care services, including physician networks.
- Hold plans liable for *any* harm resulting from inappropriate treatment decisions, unlike the more explicit criteria established in other states.
- Fail to define the proposed "ordinary care" standard against which HMOs' health care treatment decision making would be judged, leaving the matter up to resolution in the courts.
- Make HMOs liable for the actions of their *apparent* agents and for the decisions of those whom

Potential Impact of Expanded Health Plan Liability on Massachusetts Premium Costs			
\$ Millions			
	Lower	Higher	Midpoint
Impact on Public Sector			
State Government			
Medicaid	5	19	12
Employees	5	19	12
Municipal employees	12	48	30
Total Public Impact	21	87	54
Impact on Private Sector			
Self-Funded Plans	51	206	128
Other Employer Plans	66	270	168
Total Private Impact	117	476	297
Total Impact	\$138	\$563	\$351

the plans have the *right* to influence or control. This could include, for example, every physician participating in an HMO's network.

- These sweeping provisions -- in combination with the bill's complete elimination of the current \$20,000 cap on damage awards against nonprofit managed care plans -- would expose the state's HMOs to dramatically higher risks from costly lawsuits.

The Massachusetts Taxpayers Foundation is an independent, nonprofit organization which conducts research on state and local taxes, government spending, and the economy. Founded in 1932, MTF ranks among the largest and most effective organizations of its kind in the country. The Foundation has won six prestigious national awards in as many years for its work on capital spending, business costs, management of state budget surpluses, reform of the MBTA, and, most recently, the cost impact of Question 5, the universal health care proposal rejected by the voters last year.