The Commonwealth of Massachusetts

Office of the Inspector General

GREGORY W. SULLIVAN
INSPECTOR GENERAL

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

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The Honorable Governor Deval Patrick
Massachusetts State House
Office of the Governor
Boston, MA 02133

Dear Governor Patrick:

As I discussed with you recently, I am strongly supportive of many of the approaches to contain health care costs that you proposed to the Legislature in February in your bill, "An Act Improving the Quality of Health Care and Controlling Costs by Reforming Health Systems and Payments." In particular, the approach of granting the Division of Insurance additional authority to limit insurer payments to providers holds real promise for controlling – and potentially reducing – the health insurance premiums paid by the residents and businesses of Massachusetts. I applaud the intent of your bill, and I look forward to working with you to ensure passage of cost containment legislation that will help to resolve the health care cost crisis that Massachusetts and the nation face today.

I am, however, very concerned that prior to the passage of reform legislation, events could overwhelm your efforts, dramatically muting the potential impact of your proposed legislation over the next five years. The general consensus is that any legislative restrictions on payments to providers would operate prospectively, thereby creating an opportunity for providers to "beat the clock" by entering into long-term contracts with insurers prior to the passage of any reform legislation. And, in fact, it is my understanding that while existing contracts between the major insurers and Partners HealthCare (and its affiliates) are not set to expire in the next 12 months, negotiations regarding new contracts are taking place now. There is a strong possibility that these new contracts would become effective well before the expiration of the contracts that they would replace, and, in any case, would almost certainly be signed before the implementation of any payment restrictions following the passage of reform legislation.

There are also many other providers that can be expected to enter into long-term contracts soon in order to "beat the clock." New inflationary long-term contracts between insurers and providers would end any hope of controlling health care costs in the next five years.[1]

To address this crisis, our state government must use all relevant existing authority to control costs prior to the implementation of reform legislation. As you are aware, the Office of the Inspector General has long advocated that the Division of Insurance already has authority to restrict provider payments through the review in insurance rate cases of the reasonableness of the underlying costs that make up the premiums proposed by insurers. Specifically, the Division can examine an individual insurer's current contracts with particular providers and make a determination that certain contracts will produce excessive and unreasonable payments to providers. The excessive amounts would then not be passed along to premium payers, thereby lowering their premiums. Perhaps even more noteworthy, however, would be the indirect effect on future provider payments that would result from putting insurers on notice that provider contracts would be examined in upcoming reviews of insurance premiums.

The approach I am recommending applies to insurers on a case-by-case basis. In contrast, your proposed legislation would apply generally to all insurers and could be determined in one regulatory proceeding. But the case-by-case approach would bridge the gap until the time that a more general approach could be adopted. If we simply wait until legislation is passed, we will likely be unable to control health care costs for many years.

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[1] Inflationary long-term contracts can render the most effective cost control efforts moot. For example, it has come to my attention that over the past few years many provider contracts with insurers have been locking in excessive costs from the unprecedented increases in health care costs over the past decade. Then, using those excessive costs as a base, payments to providers are trended forward at an alarmingly high rate. Under some of the contracts executed in recent years, increases in payments to providers over a five-year period could be in the 50% range. And many of the most inflationary contracts appear to be so-called "global payment" contracts, including Alternative Quality Contracts of Blue Cross Blue Shield of Massachusetts. I addressed this issue in my March 2011 report entitled "Ongoing Analysis of the Health Safety Net Trust Fund and Other Health Care Issues."

It is imperative that we act immediately. I would be pleased to provide you with any assistance you believe would be useful in pursuing my recommendation.

Sincerely,

Gregory W. Sullivan

Gregory W. Sullivan
Inspector General

cc: Therese Murray, Senate President
Robert A. DeLeo, Speaker of the House of Representatives
Stephen M. Brewer, Chair, Senate Ways and Means
Brian S. Dempsey, Chair, House Ways and Means
Richard T. Moore, Senate Chair, Health Care Financing
Steven M. Walsh, House Chair, Health Care Financing
Anthony Petrucelli, Senate Chair, Financial Services Committee
Michael A. Costello, House Chair, Financial Services Committee
Gregory Bialecki, Secretary of Housing and Economic Development
Barbara Anthony, Undersecretary of Consumer Affairs and Business Regulation
Joseph G. Murphy, Commissioner of Insurance