



# IDEAS THAT WORK:

## Expanding Health Coverage for Workers

### An Innovative Approach to Protecting and Expanding Health Coverage for Workers: *California's SB 2*

Today in California, more than 4.5 million residents lack health insurance.<sup>1</sup> In Los Angeles County alone, one of every three adults is uninsured. As is true nationally and in other states, up to 80 percent of uninsured Californians are workers and their families. While various public programs guarantee coverage to seniors and most children, until recently, there has been no such assurance for workers.

All that changed in October 2003 with the passage of the California Health Insurance Act of 2003—also known as SB 2 (Senate Bill 2). In effect, this law assures most Californians that if they work, they will have health coverage. SB 2 is expected to reduce the number of uninsured Californians by 1 million<sup>2</sup> while significantly expanding coverage to Latinos (see Tables 1 and 2 on page 2). Supporters say it will also protect the health insurance of millions of workers who already have coverage through their employers.

SB 2 has yet to be implemented, however. Facing a challenge by powerful members of the business community, it remains on hold pending the outcome of a public referendum in November 2004.

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#### SB2: The “Pay or Play” Program

*Some people refer to SB 2 as a “pay or play” program. Under SB 2, employers either **pay** a fee to the state to fund an insurance purchasing program that buys private insurance, or they **play** by directly offering coverage to workers and their dependents. (More accurately, the fee paid by employers that “play” is credited if the employer purchases coverage that meets certain standards.)*

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Table 1  
**Distribution of Newly Insured Workers and Dependents  
under California's SB 2<sup>3</sup>**

Firm Size	Employees	Dependents	Total
200+ Employees: Family Coverage	307,000	372,000	679,000
50-199 Employees: Worker-Only Coverage	180,000	n/a	180,000
20-49 Employees: Worker-Only Coverage (if employer subsidies are provided)	211,000	n/a	211,000
Total Covered at Full Implementation	698,000	372,000	1,070,000

Table 2  
**Percentage of Certain Populations  
Newly Covered under SB<sup>4</sup>**

Population	Percent Newly Covered
Latinos	60%
Women	43%
Children (under 18)	14%

## How Is SB 2 Structured?

SB 2 requires employers either to pay a fee<sup>5</sup> to a new, statewide purchasing pool (that will be operated by the same agency that administers Healthy Families, the SCHIP [State Children's Health Insurance Program] in California) or to purchase coverage for their workers coverage that meets specific requirements.

The impact on business will vary depending on the number of workers involved:<sup>6</sup>

- A business with 200 or more employees must pay the fee or offer coverage to all permanent, full-time workers and their dependents. A full-time worker is defined as one with more than three months on the job who works more than 100 hours a month.
- A business with 50 to 199 employees must pay the fee or offer coverage to permanent, full-time workers. These businesses are not required to provide dependent coverage.
- The law will apply to businesses with 20 to 49 employees only if and when a tax credit is enacted to help them absorb the cost of providing health coverage to their workers.
- Businesses with 19 or fewer employees are exempt from the law.

The law stipulates that workers would pay no more than 20 percent of the premium. Those with incomes below 200 percent of the federal poverty level (in 2004, \$18,620 for an individual or \$31,340 for a family of three) would pay no more than 5 percent of their wages<sup>7</sup> toward premiums (less if they qualify for public insurance). Copayments, deductibles, and other out-of-pocket costs will be set by the purchasing pools and the agencies that regulate California's HMOs and health insurers.<sup>8</sup>

The benefits package offered to workers will depend on whether employers provide coverage that includes a set of minimum benefits.<sup>9</sup>

- If the employer does not provide health insurance, or if it provides coverage that does not include the minimum required benefits, the California Managed Risk Medical Insurance Board (MRMIB) will negotiate the coverage provided to workers through the purchasing pool.<sup>10</sup> (MRMIB is also responsible for running Healthy Families.) The package of benefits is the same although MRMIB will negotiate on deductibles, copays and other out of pocket costs.
- If the employer directly purchases health insurance, that health coverage must include a minimum benefits package that is essentially the benefits package required for HMOs and insurers in California, with the addition of prescription drug coverage.<sup>11</sup> If the health coverage does not meet this standard, the employer is not eligible for a credit against the fee and must pay the fee.

By creating a new purchasing pool for workers, and a mechanism for collecting fees from employers, the bill also potentially creates a framework that could be used to expand coverage to millions of additional employees, including small employers, part-time workers, dependents, and even the self-employed.

## **SB 2 and Public Programs**

Because SB 2 applies to workers at all income levels, including low-wage workers and their families, it interfaces with California's public health coverage programs—Medi-Cal, the state's Medicaid program, and Healthy Families.

Convinced that public programs generally work better than private insurance for low-wage workers, advocates wanted to expand employer-based coverage without jeopardizing access to public programs for low-income people. Ideally, they wanted to exempt all public-program-eligible workers from the coverage expansion. However, advocates were concerned that such an exemption might encourage employers to pay lower wages to avoid providing health insurance, so they forged a compromise.

Under SB 2, Medi-Cal and Healthy Families are required to provide "premium assistance" for public-program-eligible workers.<sup>12</sup> Generally, premium assistance means that the public program (Medi-Cal or Healthy Families) pays the worker's share of monthly premiums and other out-of-pocket costs, including any copayments and deductibles. The public program also provides supplementary ("secondary" or "wrap-around") coverage for services not provided under the employer's plan, such as dental or vision care.<sup>13</sup> However, premium assistance can be problematic. Medicaid beneficiaries may lose access to services if the plan does not provide wrap-around Medicaid coverage (e.g., dental care if it is not provided by the employer's plan), and low-income individuals may not be able to afford the deductibles, copayments, and coinsurance that are standard components of most private plans.<sup>14</sup>

Under SB 2, the role that public programs will play in providing coverage for workers who are also eligible for Medi-Cal or Healthy Families will depend on whether their employer opts to provide coverage (to “play”) or to pay a fee into the purchasing pool. Before SB 2 is implemented, the agencies responsible for implementing the law must convene a meeting of stakeholders (including consumer advocates, people with disabilities, safety-net providers, labor representatives, counties, and employers) to work out how premium assistance will interact with Medi-Cal and Healthy Families.<sup>15</sup> However, here is how premium assistance is likely to work for employers affected by the law and their workers:<sup>16</sup>

- *If the employer provides coverage*, workers enrolled in a public program are likely to be enrolled in a Medi-Cal or Healthy Families “premium assistance” program where the public program pays the worker’s share of monthly premiums and other out-of-pocket costs, including any copayments and deductibles. The public program will also provide supplementary coverage for services not provided under the employer’s plan, such as dental or vision care.
- *If the employer pays into statewide insurance pool*, workers enrolled in a public program are likely to be able to continue receiving coverage through Medi-Cal or Healthy Families.

### **State Medi-Cal Funding Gets a Boost from SB 2**

Under SB 2, the fees employers pay to the State Health Purchasing Fund are transferred either to a special account for public programs (Medi-Cal) or to the purchasing pool that provides coverage for workers who are not eligible for public programs. When a state directs additional money into its Medicaid program, the federal match system allows the state to draw down extra federal funds; thus, this arrangement can be a real boon to state economies.<sup>17</sup> In bad times, these additional funds can be used to prevent program cuts. In good times, they can be used to expand coverage.

Even if an employer chooses to provide coverage, the state may still save on its public program expenses. If workers previously enrolled in Medi-Cal opt for employer coverage offered under SB 2, Medi-Cal would need to provide premium assistance and wraparound coverage, which might be less costly than paying for a complete benefit package. Moreover, some Medi-Cal enrollees might opt to leave the program altogether. Thus, depending on the number of employees and their dependents who choose to rely entirely on employer-paid coverage and who were otherwise eligible for Medi-Cal or Healthy Families, the state might realize savings in its Medi-Cal and Healthy Families programs. (For more detailed information, see the Decision Guide in this Tool Kit).

## Ensuring Privacy

In response to concerns raised by advocates for low-income workers, SB 2 specifically prohibits employers from requiring workers to reveal family income, immigration status, or other information used to determine eligibility for Medi-Cal or Healthy Families. Advocates maintain that privacy protections such as these are important considerations for any state.<sup>18</sup>

## Laying the Groundwork

Much of the groundwork underlying SB 2 had been laid some time ago. California had years of experience with health insurance purchasing pools—among them pools for small employers, Healthy Families, and the California Public Employees' Retirement System (CalPERS), which insures 1 million workers. Also, California like many other states had implemented insurance underwriting reforms that had stabilized the employer insurance market. The state had also commissioned studies on how to achieve universal coverage, and legislators had introduced several proposals for coverage expansions in early 2003.

Another key factor in the passage of SB 2 was the support of Senator John Burton (D), a key Senate leader and co-author of SB 2. As Senate president pro-tem, he used the full force of his office to assure passage of the legislation, working with allies, opponents, and potential opponents to find the legislative middle ground needed to broaden support and minimize opposition.<sup>19</sup>

One more factor that affected the campaign around SB 2 was the effort to recall Governor Gray Davis, a strong supporter of low-wage workers. The recall effort had both positive and negative effects on SB 2. On one hand, Davis' steadfast support for organized labor translated into labor's support of both SB 2 and of Davis' fight to remain in office. On the other hand, the recall effort stole much of the attention that otherwise would have focused on the merits of SB 2. Supporters believe that, if they'd had a more sustained two-year process in which to organize and negotiate instead of a condensed one-year process, they might have succeeded in passing a more expansive measure that addressed the needs of small businesses and part-time workers.<sup>20</sup>

### An 11th-Hour Success

Despite substantial efforts by organized labor and a lack of opposition from all but a small segment of the business community, passage of SB 2 was far from certain as the 2003 legislature drew to a close. Finally, after a year of deliberation (SB 2 created more legislative hearings than any other bill in the legislative session), lawmakers passed SB 2 on a party-line vote on September 12, 2003, the last day of the session. Gov. Davis signed the measure into law on October 5, just two days before the election that recalled him.

## The Anatomy of Success: How Advocates Rallied Support for SB 2

During their year-long campaign, proponents of SB 2 employed several key strategies to garner support from diverse stakeholders and to minimize opposition.

The California Labor Federation, the AFL-CIO, and the California Medical Association (CMA) cosponsored the legislation. Health Access California (a coalition of consumer groups) and many other advocacy groups worked hard to win passage.

While health care providers generally supported SB 2, the CMA's decision to sponsor the measure generated some controversy within the group itself, as members include physicians with a wide range of views on how best to expand coverage. While each doctor had his or her own opinion, the CMA leadership was able to get its members to support this important proposal and place it at the top of CMA's agenda.<sup>21</sup>

The role that labor leadership played was just as important. Although various unions have different perspectives on health care reform, the leadership of the Labor Federation succeeded in unifying its members and actively campaigned in support of SB 2.<sup>22</sup>

The support of the CMA and the Labor Federation underscores the importance of working with non-traditional partners to pass a measure such as SB 2. In this particular campaign, CMA was considered a "strange bedfellow" by both labor and consumer groups, including Health Access California, which had been at odds with the CMA in recent years. This unusual collaboration gave the campaign added impact: Doctors and labor brought different interests to the table, and having both groups out front on the bill sent the powerful message that this was a serious effort.<sup>23</sup>

Clearly, another factor essential to SB 2's passage was the lack of opposition by insurers and HMOs. Supporters strategically pushed for only the most minimal insurance reforms necessary to realize SB 2, thereby minimizing opposition from insurers, whose positions ranged from "nervous neutrality" (Blue Cross) to supportive (Kaiser Permanente and Blue Shield). They built on existing consumer protections, including previously passed insurance reforms and the state's Patients' Bill of Rights, which had been on the books since 1999. Thus, supporters did not need to "reinvent the wheel" when it came to certain consumer protections, thereby avoiding fractious debates that would have incurred the opposition of HMOs and insurers.<sup>24</sup>

Opposition *did* come from the business community—especially fast food restaurants such as McDonald's and retailers like Wal-Mart—and from a handful of other employers that provide family coverage to full-time, permanent workers only under very limited circumstances. Many businesses that already provided health insurance to their workers were unenthusiastic about SB 2 but did not actively oppose it. For more about how different types of employers are likely to react to such an expansion proposal, see the Decision Guide.

When opponents argued that SB 2 would hurt small businesses, supporters countered with the fact that small businesses would be exempt and, moreover, that 97 percent of large and medium-sized firms already provided coverage, so SB 2 actually would affect very few employers.<sup>25</sup>

Having struggled to protect health benefits for low- and moderate-income working families from budget cuts in the midst of the state's \$38 billion

deficit, Democratic legislators in California favored SB 2. They had been unable to expand coverage through public programs and were pleased that more than a million uninsured residents would receive private health insurance thanks to the measure.

Consumer organizations ranging from AARP to the California Council of Churches to Health Access California also worked hard in support of SB 2, sending educational mailings to their members, participating in numerous press events at the district level, and working closely with health care providers, labor groups, and community organizations. In addition, labor and community groups sponsored town hall meetings with legislators throughout the state during 2003. And labor disputes and strikes by janitors and other workers served to highlight the problems workers face when employers try to pare down health coverage or drop it altogether.

Supporters were especially busy over the summer and into the fall before SB 2 became law. In the home stretch—the final week after the bill had passed but before the Governor signed it—more than 40 organizations delivered 5,000 letters on gurneys to the state capitol urging Governor Davis to sign this key remedy for the ailing health care system.

In the end, SB 2 had the support of an unusually broad spectrum of stakeholders. It was rare to have most sectors of the health care community—doctors, nurses, consumers, seniors, labor, and even some insurers—support one proposal. Because health care reform is complicated, when it comes to evaluating expansion proposals, voters and legislators tend to put their faith in the opinions of people they trust about health care issues. And this was the first expansion proposal that none of the key health care stakeholders strongly opposed. Proponents had successfully crafted a piece of legislation that neutralized the opposition.<sup>26</sup>

## The Fight Continues

Within days of the signing of SB 2, the state Chamber of Commerce and the California Restaurant Association moved to repeal the measure. SB 2 now faces a ballot referendum (Proposition 72) in November 2004. Until the voters act, implementation of the measure is officially on hold.

This is a high-profile, high-stakes battle. As demonstrated by California's recent grocery workers strike, many large employers are attempting to scale back or eliminate health coverage. Some employers, including McDonald's, Target, Nordstrom, and Macy's, are funding the opposition to SB 2.<sup>27</sup> If they succeed in overturning SB 2, the 18.5 million California workers with job-based health coverage could drop by 1 to 3 million (as some employers are emboldened to scale back coverage) instead of climbing by an estimated 1 million under SB 2.

These companies want to freeze the bill in its tracks and stifle any similar proposals in other states. However, if voters reaffirm SB 2 at the ballot box in November, not only will the Schwarzenegger Administration have to implement the measure, but the victory would send a powerful message across the country that voters want real health security and health care reform.

## Endnotes

- <sup>1</sup> E. Richard Brown and others, *SB 2 Will Extend Coverage to 1 Million Uninsured Workers and Dependents* (Los Angeles: UCLA Center for Health Policy Research, September 2003).
- <sup>2</sup> *Ibid.*
- <sup>3</sup> E. Richard Brown and others, *op. cit.*
- <sup>4</sup> Arindrajit Dube, *Research Brief: Impact of SB2 on Health Coverage* (Berkeley: Institute for Labor and Employment, University of California, September 9, 2003).
- <sup>5</sup> This fee includes required contributions from workers, as noted in the paragraphs that follow.
- <sup>6</sup> Act of October 5, 2003, Ch. 673, § 2122.3-5 (SB 2: Health Care Coverage).
- <sup>7</sup> Act of October 5, 2003, Ch. 673, § 2150 (SB 2: Health Care Coverage).
- <sup>8</sup> Act of October 5, 2003, Ch. 673, § 2150.1(c) (SB 2: Health Care Coverage). The California Managed Risk Medical Insurance Board is charged with determining whether proposed copayments, deductibles, and coinsurance would deter enrollees and dependents from receiving appropriate and timely care, including enrollees with low or moderate incomes. It will also weigh the impact of workers' out-of-pocket costs against the cost of providing the coverage.
- <sup>9</sup> Act of October 5, 2003, Ch. 673, § 2122.9, § 2140.6, § 2147, § 2219 (SB 2: Health Care Coverage).
- <sup>10</sup> *Ibid.*, § 2150.1(c) (SB 2: Health Care Coverage).
- <sup>11</sup> Generally, the minimum benefits requirement can be met by fulfilling one of the following five criteria: 1) through plans that meet California Insurance Code standards or Knox-Keene Act standards (which include limits on copayments and deductibles for certain services, such as maternity care, and provide rights to access specific types of providers, services, and prescription drugs); 2) through contributions to any Taft-Hartley or collectively bargained plan; 3) through multiple employer-welfare arrangements authorized by the California Insurance Code; 4) through coverage provided by the University of California to students who are also University of California employees; and 5) through coverage provided by the California Public Employees' Medical and Hospital Care Act. These criteria are established by Act of October 5, 2003, Ch. 673, § 2160.1 (SB 2: Health Care Coverage). Before SB 2, the California Insurance Code imposed design and marketing standards, such as guaranteed issue, restrictions on risk categories, and rate bands, on policies sold to employers with fewer than 50 workers. SB 2 extends these standards to employers with 50 to 199 workers, and it incorporates premium-sharing requirements for employers with more than 50 workers. See Pat Butler, *ERISA Implications of SB 2: Full Report* (Oakland: California HealthCare Foundation, March 2004) and *Knox-Keene Protections, Quick Reference* (Los Angeles: Health Consumer Alliance, May 2003). Also note that this "minimum benefits requirement" credit has yet to be tested in the courts. If it is ultimately invalidated by an ERISA legal challenge, however, there is a fallback provision that is less likely to face an ERISA challenge: An employer would qualify for a full credit if the amount spent on insurance coverage equaled or exceeded the lower of either the cost of Healthy Families (California's State Children's Health Insurance Program, or SCHIP) or 150 percent of the cost for coverage through Medi-Cal (California's Medicaid program). Act of October 5, 2003, Ch. 673, § 240.3, § 14124.916 (z)(bb)(4)(b) (SB 2: Health Care Coverage).
- <sup>12</sup> Act of October 5, 2003, Ch. 673, § 2190.1(a) (SB 2: Health Care Coverage). Prior to the enactment of SB 2, California had a limited premium assistance program within Medi-Cal for people with high-cost medical conditions. SB 2 also authorized the formation of expanded premium assistance in Medi-Cal and a new premium assistance component within Healthy Families.
- <sup>13</sup> Act of October 5, 2003, Ch. 673, § 12693.55(A) (SB 2: Health Care Coverage). SB 2 also requires that employees be informed of this provision.
- <sup>14</sup> Amanda McCloskey and Rachel Klein, *Preserving Medicaid in Tough Times: An Action Kit for State Advocates* (Washington: Families USA, May 2003).
- <sup>15</sup> Act of October 5, 2003, Ch. 673, § 10764(f) (SB 2: Health Care Coverage).
- <sup>16</sup> Act of October 5, 2003, Ch. 673, § 2190.1, 2190.2 (SB 2: Health Care Coverage).
- <sup>17</sup> For more information, see also, Rachel Klein, *op. cit.*
- <sup>18</sup> Act of October 5, 2003, Ch. 673, § 2160.4, § 2190(a), (b) and (c) (SB 2: Health Care Coverage).
- <sup>19</sup> Conversation with Anthony Wright, Executive Director, Health Access California, March 3, 2004.
- <sup>20</sup> *Ibid.*
- <sup>21</sup> *Ibid.*
- <sup>22</sup> *Ibid.*
- <sup>23</sup> *Ibid.*
- <sup>24</sup> *Ibid.*
- <sup>25</sup> Health Access California, *Economic Impacts of SB 2* (Oakland: Health Access California, September 12, 2003), available online at [www.health-access.org/sb2\\_economic\\_impacts.htm](http://www.health-access.org/sb2_economic_impacts.htm).
- <sup>26</sup> Conversation with Anthony Wright, Executive Director, Health Access California, March 3, 2004.
- <sup>27</sup> For more information about the groups that are challenging SB 2, visit the Web site for Californians Against Government Run Health Care at [www.stopthehealthtax.org](http://www.stopthehealthtax.org). For more information about the groups supporting SB 2, visit <http://www.saveyourhealthcare.com>.