Gimme Coverage

The landmark law passed last year in Massachusetts has led many more states to take a shot at universal health insurance. **BY ALAN GREENBLATT**

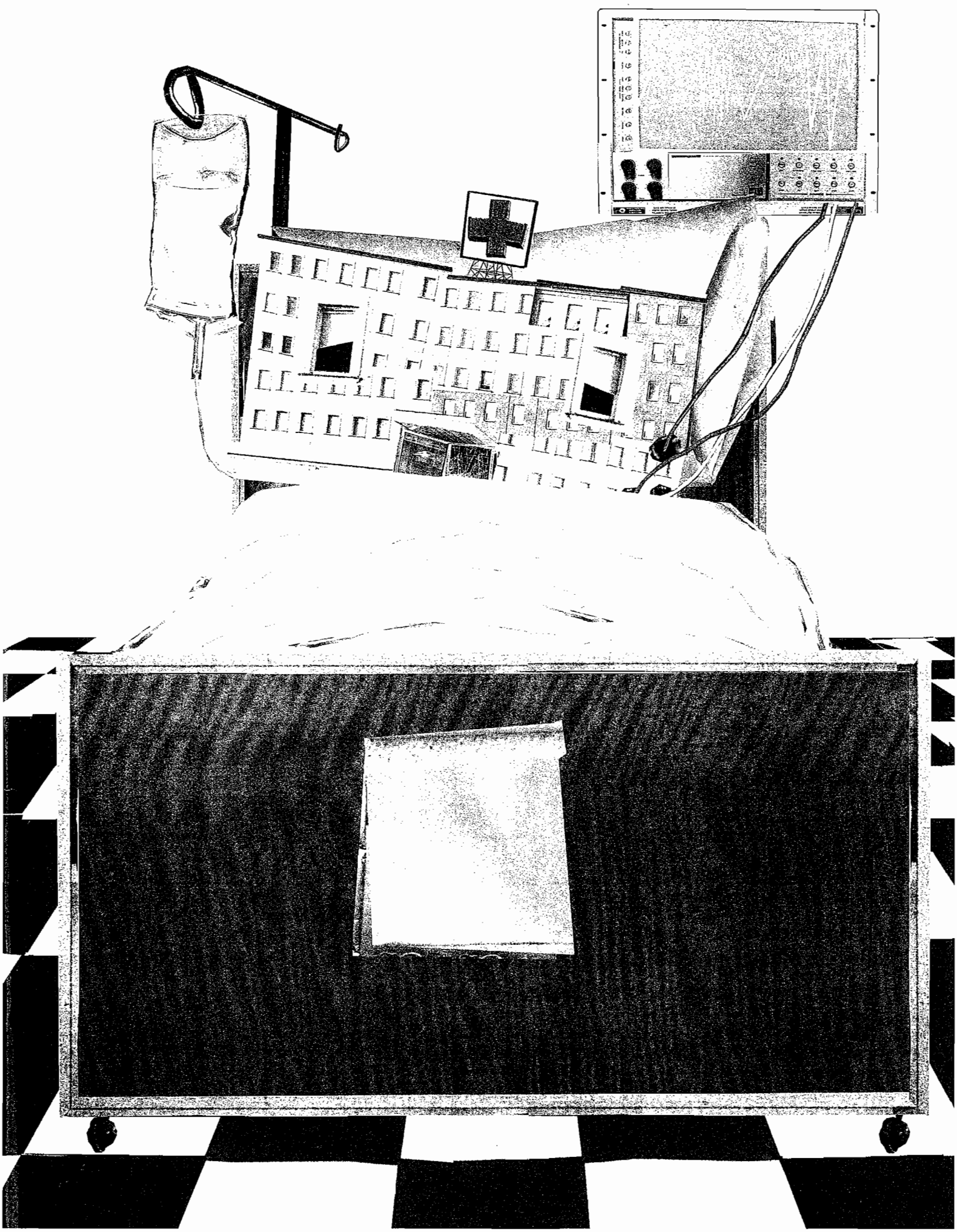
This year, lawmakers in Washington tried everything to extend health coverage to the uninsured. They earmarked money to cover more children, allowed small employers to purchase coverage at a government-negotiated price and let parents cover dependents as old as 25. Given all that, policy makers are confident they can reach their twin goals: insure all children by 2010 and everyone else by 2012.

All of this activity transpired, of course, in Washington State—not Washington, D.C. Washington was one of about 20 states to make health coverage expansion a top priority this year—a telling difference from the federal government, which has done almost nothing as yet to address the needs of the nation's 46 million uninsured. Congress has not acted, although a reauthorization of SCHIP—the State Children's Health Insurance Program—is coming due this fall. The Bush administration has all but officially punted the issue to the states. "The president made clear he believes the federal government should not run health care," Michael Leavitt, the Health and Human Services secretary, said earlier this year. Instead, Leavitt added, "he wants to partner with states."

That represents an important shift from earlier health policy debates. Usually, discussions about covering the uninsured are driven by federal policy makers, who seek to impose new rules throughout the health care system. This time, the states are taking action on their own. "We can't wait for the federal government," says Linda Evans Parlette, deputy Republican leader in the Washington Senate. "We better work with what we have at home."

Officials in a number of states feel the same way. The problems of caring for the uninsured and the burden they place on the rest of the system have become acute. It's unlikely that more than a smattering of states will overcome the financial and regulatory hurdles that stand between them and universal coverage within their borders, but a good number will certainly try. They have been emboldened by the catalytic examples set by the New England states—Vermont, Maine and most recently and notably Massachusetts, with its individual insurance mandate. "What Massachusetts showed," says Enrique Martinez-Vidal, acting director of state coverage at the research organization AcademyHealth, "is that once they had those building blocks

ILLUSTRATIONS BY TOM COCOTOS



in place"—earlier expansions of coverage that brought down the number of uninsured to manageable levels—"they could make that final leap to get to near-universal coverage."

One significant difference between this year's debate and previous efforts at expanding coverage is that states recognize that they can't afford to cover everyone and are relying more on private providers. Here, Massachusetts again is a model, with its ideas about pooling risk for small companies and linking them to private insurers. That's an approach that appears to have legs, given the number of states that are thinking about imitating it.

The newfound resolve in several states—and the increasing salience of the issue in the 2008 presidential contest—could put pressure on federal lawmakers in the other Washington to act. "This is not a state-specific problem, that's for sure," says Karen Keiser, who chairs the Washington Senate's health committee. "That's why you have so many different states doing what they're doing."

The Worried Insured

For years, states have tinkered at the margins, trying to usher new populations of the uninsured into existing programs. The renewed interest in reshaping health care systems is due, in part, to the opportunity presented by improved financial conditions. State revenue pictures are, mainly, brighter, while Medicaid expenditures, which had been growing at double-digit clips, have leveled off, at least temporarily.

Perhaps just as important politically is the growing recognition that most of the people who lack coverage are employed. There are millions of people—some of them solidly middle class—who are working in jobs that don't provide them with coverage, and they can't afford (or choose not to prioritize) expensive individual coverage.

It's a problem that's accelerating. More and more private employers are dialing back on the health benefits they offer because of rising costs, with the percentage of firms offering health insurance threatening to slip below the 50 percent mark. Among those still providing coverage, many now require their workers to pay a greater share of the cost, or refuse to cover spouses or dependents. That is significant because employers have been the backbone of the nation's health insurance system since World War II, when companies desperate for workers were constricted by wage limitations and started offering generous benefits in lieu of increased compensation. The result is that plenty of people, including those who still have coverage through their jobs, have grown nervous about losing their benefits, and they are communicating that fear to elected officials. "As employer-based coverage continues to erode, the public is increasingly supportive of government playing a role," says Stan Dorn, a senior research associate at the Urban Institute. "The public understands that the uninsured are working people, and that doesn't seem fair."

"The realization is upon us that we can't continue with what we've got," says Washington state Senator Keiser. "It's unsustainable."

Several governors, including Ed Rendell of Pennsylvania and Arnold Schwarzenegger of California, have sought to extend the argument past the point of fairness. They note that those with insurance are paying several pennies out of every premium dollar to underwrite indirectly treatment for those lacking coverage.

Schwarzenegger illustrates as well as anyone the shifting politics surrounding the issue. He opposed an employer-coverage mandate a couple of years ago and last year vetoed a universal health bill. This year, he announced a $12 billion plan to insure everyone in the state and his office hosted the press conference at which sponsors of last year's vetoed bill announced its reintroduction.

Like other state leaders, Schwarzenegger has grown frustrated by the traditional piecemeal approach with multiple programs, each of which try to bite off separate pieces of the insured population. The universal proposals "require a different sort of implementation," says Lynn Etheridge, a consultant in the Health Insurance Reform Project at George Washington University. "It just isn't going to work to build on the old welfare base and have 47 million people fill out 25-page paper applications at the county."

Building the Model

Ten to 15 years ago, the talk at the state level was all about creating a uniform package that would provide the same level of care to

all citizens. That is no longer the case. Instead, the prevailing idea is to ensure that everyone has adequate coverage of some sort. Defining what that is—or even what being insured means—is the challenge currently facing Massachusetts as it begins to implement its 2006 law. "We're in a strikingly experimental space right now," says John McDonough, a former Massachusetts legislator turned health coverage advocate.

The Massachusetts model requires all individuals to have insurance or pay fines. Those who can't afford insurance are eligible for a subsidy. In April, the state decided to exempt an estimated 60,000 people from the requirement because their incomes were too high to justify subsidies but too low to make coverage truly affordable. That number represents about 1 percent of commonwealth citizens—but nearly 20 percent of its uninsured adults.

Still, the plan appears to be working out better, so far, than many had predicted—in no small part due to new Governor Deval Patrick's ability to negotiate steep discounts for premiums in the state's chosen health plans. Rates vary by age and other factors, but Patrick got costs down about 20 percent from earlier bids. The Massachusetts plan is designed to allow the uninsured to choose among a variety of private insurance plans that go beyond the bare basics of catastrophic coverage, but the plans do not have to cover a guaranteed set of benefits determined by the state.

State and federal efforts in years past were all about expanding government programs. This time, the ideas being discussed include a real reliance on the private market. That difference is also playing a significant role in changing the politics of this issue. The notion of the state creating a "connector" that would link individuals or small businesses to approved insurance plans was developed for the District of Columbia, by the Heritage Foundation, a conservative think tank. It never took off in that city, but it did impress Mitt Romney. While he was governor of Massachusetts, it became a central part of the state's insurance reform and the means of connecting the uninsured with affordable insurance plans.

"We're in a strikingly experimental space right now," says former Massachusetts legislator John McDonough, of his state's new health insurance law.

The idea that the state would not dictate terms of insurance, but instead act as a sort of broker in a private marketplace, has created a unique political amalgam. The ideas of individual responsibility and market competition have drawn support from Republicans and business groups. But using such ideas to provide more coverage has proven to be acceptable to Democrats and health care advocates. This new approach—saying that government does not have to provide insurance for everybody but will offer ideas for improvement to the private market and some help to individuals in the form of premium subsidies—promises to remove many of the ideological sticking points that have hindered reform efforts in the past. "The crisis has reached the point," says Carolyn Hogue, who lobbies for the National Federation of Independent Business in Washington State, "where you have people coming into office not wedded to divides between approaches that are totally government or totally private."

States are looking at a wide variety of approaches to expanding coverage, and they are clearly borrowing ideas from each other. In Maine, for example, Governor John Baldacci is looking to build on his state's 2003 health coverage law to increase private insurance coverage and rate regulation of that market. In Illinois, which passed a universal coverage plan for children two years ago, Governor Rod Blagojevich has unveiled a $2.1 billion plan for adults that would expand Medicaid and provide subsidies for health insurance to some state residents. Tennessee is offering a scaled-down, discount insurance option—$25,000 worth of coverage per person for basic treatment, hospital care and prescription drugs—for employees of small businesses that do not provide insurance.

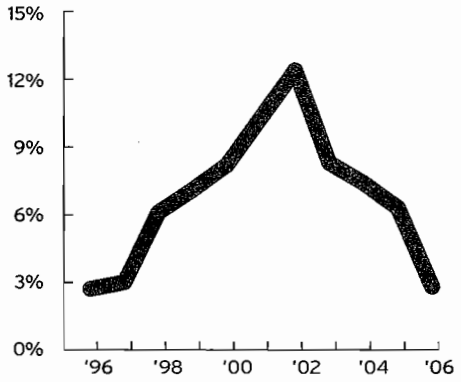
Getting Around ERISA

California legislators are still kicking around Schwarzenegger's ideas as well as their own. Schwarzenegger's "universal coverage" proposal would require all residents to have insurance. It would get there

Under ERISA, states can't tell self-insured companies what to do, and that could defeat some of the new plans.

Medicaid Money

Annual growth rate of Medicaid spending



Source: Kaiser Family Foundation

by expanding access to low-income programs and offering tax breaks to promote insurance coverage.

The best news Schwarzenegger has received so far was the decision by HHS in Washington to underwrite $3.5 billion of the $12 billion total cost. Schwarzenegger would pay for the rest with a set of fees or profit caps on all the private players that would be affected—doctors, hospitals, employers and insurance companies.

The fees and caps are highly contentious and likely to make the plan difficult to pass. But such concerns aside, even if his plan or a Democratic alternative were to become law, it's not clear that it would pass muster in federal court. The reason is that a 1974 law called the Employee Retirement Income Security Act generally preempts states from regulating employee health benefit plans. It's the reason the U.S. Supreme Court in 2004 struck down state laws allowing patients in HMOs to sue managed-care plans. It was also the reason a federal court last year struck down a Maryland law designed to force Wal-Mart to provide health coverage to its employees. "The act violated ERISA's fundamental purpose of permitting multistate employers to maintain nationwide health and welfare plans, providing uniform nationwide benefits," wrote the judge in his opinion.

ERISA pertains to self-insured companies—large employers that maintain the risk of catastrophic coverage themselves, rather than spreading the risk to an insurance company. The percentage of workers in a state who work for self-insured companies varies but is substantial. "States can't tell the self-insured what to do, they can't collect data, they basically have no jurisdiction," says Lynn Blewett, director of the University of Minnesota's public health administration program. As a result, "when the state does any regulation, it can only have an impact on a small portion of the market. Take out Medicare, Medicaid and the self-insured, and you're left with a third of the market."

Hawaii has long had a waiver from ERISA and is the only state with an employer mandate. It's highly unlikely that Congress will amend the law for other states. It's a third-rail issue for business groups and insurance companies. Instead, state officials are desperately in search of clever ways to skirt the limitations imposed by ERISA. To help finance his plan, Ed Rendell in Pennsylvania is calling for a "fair share" tax on businesses that don't offer insurance. That's an idea in obvious conflict with ERISA. Rendell says he'll impose the tax on all businesses but offer a refund to employers that provide coverage by giving them a tax credit equal to the amount they pay in "fair share" taxes. It's not clear that such a plan would pass legal muster, even if it passes the legislature.

Once again, Massachusetts may offer states a better model. Its law allows employers to set up "Section 125" accounts, permitting workers to purchase coverage through the state's "connector," using pretax income. That may actually save employers money, because they would not have to pay FICA taxes on the amount of income employees devoted to health insurance. The federal Department of Labor has said these accounts are not ERISA-related plans.

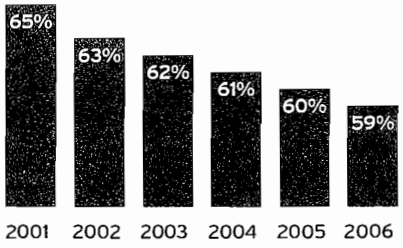
They could still be challenged in court by employers, who might object to the $295 the state will charge them per uninsured worker. They could also challenge the new law's requirement that they designate the state connector as their health plan if they don't provide coverage themselves. So far, the low cost and potential benefits of the new law—for employers, let alone their workers—have helped keep lawsuits at bay. "At this point, we don't have even a peep of an ERISA challenge," says McDonough, the former legislator, "although I have to say with humility that there could be one filed this afternoon."

Unified Theory

Despite all the obstacles, one thing that gives this current reform wave momentum is that a more disparate set of interest groups are offering their support. Conservatives are happy about the increasingly market-oriented approach proposed by states. Health care providers—doctors, nurses, hospitals—are interested since most states are primarily looking at expanding coverage rather than containing costs. There are notable exceptions. California providers are not particu-

Slippery Slide

Percentage of workers covered by employer health benefits



Source: Kaiser Family Foundation

larly happy about the proposed fees. And in New York, Governor Eliot Spitzer planned to cut health spending, particularly Medicaid reimbursement rates to hospitals and nursing homes. The hospital association and health care workers union responded with more than $4.5 million worth of public attacks on Spitzer's plans.

In most states, though, and nationally, the parties involved are singing a more harmonious tune. When Rendell announced his health plan, he was accompanied by representatives from Blue Cross, the physicians association and many other groups. The following day, a strange-bedfellows coalition, including the U.S. Chamber of Commerce, insurance companies and the liberal advocacy group Families USA, focused on federal programs and called for an effort to push for tax credits, subsidies and the expansion of existing programs to provide wider coverage to the uninsured. The day before Rendell's event, the Business Roundtable, AARP and the Service Employees International Union held a joint event calling for "affordable, quality health care for all." SEIU and other unions have even joined with their usual antagonist Wal-Mart in a concerted push for "better health care for everyone."

Everyone recognizes that the current health care system needs fixing, which is why so many states are making the attempt. But, states clearly can't make it on their own. In fact, their main concern may be that SCHIP is running out of money prior to its scheduled reauthorization in October, while the Bush administration has proposed yet another round of cuts to Medicaid. "The plans are all predicated on the belief that state revenues will stay strong, that Medicaid costs will remain flat, and that there will be new federal Medicaid and SCHIP money," says Matt Salo, who directs the health and human services committee at the National Governors Association. "All of those are questionable."

Meanwhile, states are rolling forward with fixes for an ailing system. "The realization is upon us that we can't continue with what we've got," says Washington state Senator Keiser. "It's unsustainable."

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California's governor sees the need for health insurance for all.

AP IMAGES

Big States, Big Plans

CALIFORNIA

Governor Arnold Schwarzenegger's plan would:

- cost $12 billion
- require all residents to have insurance
- impose new fees on health care providers and employers
- expand access to low-income programs
- raise reimbursement rates under public programs for providers
- give tax breaks to promote insurance coverage
- require insurance companies to spend 85 percent of revenues on patient care

ILLINOIS

Under Governor Rod R. Blagojevich's "Illinois Covered" plan for universal coverage:

- small businesses and employees not offered coverage would be guaranteed access to new private insurance
- rebates would be offered to qualifying participants
- eligibility for the state's program for low-income working parents would be expanded from 185 percent of poverty level to 400 percent
- young adults could be covered under parents' plans to age 30

NEW YORK

Governor Eliot Spitzer's steps toward universal coverage:

- funding (approved by legislature) to cover all 400,000 of state's uninsured kids by expanding access under state program to families at 400 percent of poverty level
- seek Medicaid reform by cutting reimbursement rates to hospitals and nursing homes (sought $1.3 billion in cuts; legislature agreed to $900 million)
- expand home care for seniors and disabled
- promote health IT
- use newly created Office of Health Insurance Programs to coordinate public programs and ensure eligible citizens are enrolled

PENNSYLVANIA

Governor Ed Rendell's plan to provide basic but universal coverage through the private insurance market:

- coverage would be mandated for those with incomes above 300 percent of poverty level, along with college students
- uninsured adults would get subsidies
- small businesses and those that pay below state wages would participate
- companies that do not provide coverage would pay a state assessment

WASHINGTON

Legislators in Washington passed a scaled-down version of Governor Christine Gregoire's proposals. Two new bills:

- require insurers to maintain coverage of dependents until age 25
- allow small employers access to purchase coverage through a state board
- direct state agencies and insurance programs to study more cost-effective treatments, particularly for chronic diseases
- provide funding for coverage of 38,000 additional children

Source: Governors' Web sites