Student Health Insurance Coverage: Competing Institutional and Governmental Mandates

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INTRODUCTION

Affordable health insurance is a hot button issue not only for pundits and politicians, but also at dinner tables across the country, particularly in the present state of recession.¹ For students, the issue of health insurance affordability is especially

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complicated because insurance is often mandated either by statute or school policy and students often live off their loans. Many politicians and policy makers have proposed

mandating health insurance as a solution to the healthcare crisis while others have plainly opposed it. The scheme already implemented in the Commonwealth of Massachusetts ("Massachusetts" or "Commonwealth") illustrates the possibility of such a program on a national scale used to address both the uninsured problem and higher education affordability by including students in the class of those who may obtain the same subsidized insurance programs made available to individuals regardless of their status as students.

When a state or federal administration makes health insurance mandatory for individuals already subject to a student mandate, students who would otherwise fulfill the low-income requirement for receiving more highly subsidized health insurance of the statutory mandate and who do not receive funding from, or are covered by their family’s policy, should included within the class of individuals eligible to receive the state subsidized insurance. This note will begin by tracing the history and present state of


3 Supra note 1 and accompanying text (noting position of health care reform in the 2008 United States presidential election and the differing positions of contended primary and general election candidates). There are countless articles discussing the health insurance issue and the legal options available. See, e.g., Editorial, Mandatory Health Insurance, N. Y. TIMES, April 15, 2006, at p A12 (describing mandatory program in Massachusetts as potential model for nation) [hereinafter Mandatory Health Insurance]; Louise, Obama and McCain On Mandatory Health Insurance, COLORADO HEALTH INSURANCE INSIDER, Sept. 17, 2008, http://www.healthinsurancecolorado.net/blog/blog1/2008/09/17/obama-and-mccain-on-mandatory-health-insurance/ (individual editorial comparing options from candidates).


5 See infra text accompanying notes 82-86 (illustrating discrepancy in cost of student mandated health insurance and subsidized health insurance in Massachusetts); see also Mark Rukavina et al., Not Making the Grade: Lessons Learned from the Massachusetts Student Health Insurance Mandate, 13-14 THE ACCESS PROJECT, May 2007, available at http://www.accessproject.org/adobe/not_making_the_grade.pdf (recommending required student coverage be comparable to non-student coverage either by making subsidized program available to students plan or by
statutory and institution health insurance requirements for students, as well as the varied attempts and proposals for the creation of health insurance coverage through a health insurance mandate. It will then examine the Commonwealth of Massachusetts's programs using it as a case study to analyze the interplay between An Act Providing Access to Affordable, Quality, Accountable Health Care (hereinafter the "Massachusetts Health Care Mandate Act") which creates an individual mandate for Massachusetts residents and Section 18 of Massachusetts General Laws Chapter 15A (hereinafter the "Massachusetts Student Mandate Act"), which requires health insurance for those students enrolled in "higher learning" institutions. Section I will discuss the condition of the uninsured problem in America among the general population and among the student population. Section II will use Massachusetts as an example to explicate the potential interplay between the two competing mandates if other states or the federal

demanding more coverage in required student program). An essential component of the individual mandate is the government subsidized insurance for those that cannot afford the mandate that is placed upon them. See Stephen L. Isaacs & Steven A. Schroeder, California Dreamin' State Health Care Reform and the Prospect for National Change, 358 NEW ENG. J. MED., 1537, 1538 (2008). One organization notes the danger of the individual student requirement that causes students to be ineligible for other subsidized plans under Chapter 58 of the Acts of 2006 due to the preceding individual student mandate. See Rukavina, supra, at 1.

6 2006 The Commonwealth of Massachusetts Advance Copy 2006 Acts & Resolves 76. The legislation reads specifically that "the following individuals age 18 and over shall obtain and maintain creditable coverage so long as it is deemed affordable . . . (1) residents of the commonwealth; (2) individuals who become residents of the commonwealth within 63 days." MASS. GEN. LAWS ch. 111M, § 2(a) (Supp. 1 2008). The agency responsible for implementing the insurance subsidy was created by MASS. GEN. LAWS Ch. 176Q et seq. (Supp. 1 2008). The goals of the Act, specifically the subsidy component, is accomplished through Title 956 of the Code of Massachusetts Regulations. 956 MASS. CODE REGS. 3.00 (2008). The term "part-time" when referring to students and non-students is understood as an individual making minimum wage for 20 hours a week of work for 52 weeks a year, in Massachusetts totaling $8,320 a year. See MASS. GEN. LAWS ch. 151, § 1 (2004) (stating any amount under $8.00 an hour is manifestly unreasonable). The Massachusetts Health Care mandate Act has created substantial changes in the affordability of health care in Massachusetts see generally ACT!! Affordable Care Today, Massachusetts's Healthcare Reform Law (Aug. 2008), http://www.hcfama.org/_data/n_0002/resources/live/Chapter%2058%20Summary%20August%202008.pdf


8 See infra note 13 and accompanying text.
government institutes a similar model. Section III will propose the inclusion of students among the benefited class of subsidized health insurance that typically accompanies an insurance mandate. Section IV will conclude the analysis of the current state of the healthcare crisis in the United States.

This note will elucidate how the extension of available subsidized coverage to students could lessen the burden on individuals seeking higher education, specifically undergraduate students. It is recognized that the present economic instability calls into question the feasibility of such a program. Nonetheless, if a mandatory health insurance requirement is implemented with the accompanying health insurance subsidy, it would provide each state the opportunity to include students among the class of individuals who could receive reduced cost insurance effectively promoting higher education and avoiding the competing health insurance requirements that student-residents face.

Section I

A remarkable 45.7 million Americans live without health insurance. The
roughly 250 millions are insured receive coverage through government programs, private programs, or employment provided health insurance programs. Among the uninsured are 1.7 million college students.

Most of these college students have incurred a tremendous amount of debt to obtain post-secondary education. The problems that students face because they are insured occur on university and college campuses across the country. State legislatures numbers do not show are the number of underinsured Americans who have purchased programs that are insufficient for their current or future needs. See cnnhealth.com, Census: Fewer Americans Lack Health Insurance, Aug. 26, 2008, http://www.cnn.com/2008/HEALTH/08/26/census.uninsured/index.html?section=cnn_later. The cost of health insurance premiums has continued to rise dramatically with the average worker payment towards family coverage costing $3,354 annually and the average family health insurance premiums costing $12,680, figures an increase of five percent in 2008 from 2007. Kaiser Family Foundation, Yearly Premiums for Family Health Coverage Rise to $12,680 in 2008 Up 5 Percent, As Many Workers Also Face Higher Deductibles, Health Affairs, Sept. 24, 2008, http://www.kff.org/newsroom/ehbs092408.cfm [hereinafter Yearly Premiums for Family Health Coverage Rise].

See Income, Poverty, and Health Insurance Coverage in the U.S., supra note 15, at 21 (noting 27.8 percent covered by government health programs, 67.5 percent are covered by private programs, and 59.3 percent covered by employment health insurance programs).

See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO THE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS, U.S. SENATE, GAO-08-389, HEALTH INSURANCE: MOST COLLEGE STUDENTS ARE COVERED THROUGH EMPLOYER-SPONSORED PLANS, AND SOME COLLEGES AND STATES ARE TAKING STEPS TO INCREASE COVERAGE, 5 (Government Accountability Office 2008), available at http://www.gao.gov/new.items/d08389.pdf. "[P]art time students, older students, students from racial and ethnic minority groups, and students from families with lower incomes" were disproportionately uninsured. Id. The Current Population Survey which measures the number of uninsured did not sample students living in dormitories, thus they were not included unless mentioned by parents in interviews by the CPS. See Income, Poverty, and Health Insurance in the U.S., supra note 15, at 27.


and private post-secondary institutions have proposed variations on individual health insurance mandates to remedy both the uninsured student population and the uninsured general population in the Untied States.\(^2\) Massachusetts implemented a mandatory individual health insurance program, and other states have considered similar programs as a solution to the healthcare crisis.\(^21\)

percent of UC undergraduates” did not have “adequate health insurance”). In this internet age, much of the information on these health insurance programs is obtained on the websites of both schools and local government. See, e.g., Mass.gov, Health and Human Services, http://www.mass.gov/?pageID=eohhs2terminal&L=5&L0=Home&L1=Consumer&L2=Insurance+(including+MassHealth)&L3=Additional+Insurance+and+Assistance+Programs&L4=Qualifying+Student+Health+Insurance+Program+(QSHIP)&sid=Eeohhs2&b=terminalcontent&f=dhcfp_consumer_qship_intro&csid=Eeohhs2 (last visited February 18, 2009) (summarizing the QSHIP program and its requirements). The absence of adequate health insurance results in student attrition for medical reasons. See University of California, supra (noting the University’s “alarming medical-related student drop-out rates”). The University of California press release citing reasons for their mandate noted twenty-five percent of student attrition is for “medical reasons” associated to absence of or insufficiency of student insurance. Id. Universities like William and Mary suggest students apply for FAFSA, and if eligible, can use the student loan they receive towards their health insurance premium. See William & Mary, Financial Aid for Health Insurance Coverage (2008), http://www.wm.edu/admission/financialaid/howtoapply/finaidhealth/index.php (last visited March 2, 2009).

\(^{20}\)See, e.g., 2006 The Commonwealth of Massachusetts Advance Copy 2006 Acts & Resolves 76. (mandating health insurance coverage in the Commonwealth of Massachusetts); MASS. GEN. LAWS ch. 15A, § 18 (2002) (requiring students of “institution[s] of higher learning” be enrolled in “qualifying student health insurance program[s]”); see University of California, supra note 19 (announcing health insurance mandate for UC students); see Armstrong Atlantic State University, supra note 2 (describing health insurance mandate implemented by the Board of Regents of the University System of Georgia). The Massachusetts program requires “creditable health coverage, so long as affordable coverage is available” from the state. Raymond, supra note 4, at 8.

\(^{21}\) See Thompson Hine, The State Mandated Pay or Play Health Insurance, http://www.thompsonhine.com/publications/publication904.html (last visited October 20, 2008) (discussing so called “pay or play” programs); see generally Elizabeth A. Weeks, Failure to Connect: The Massachusetts Plan for Individual Health Insurance, 55 U. KAN. L. REV. 1283 (2007) (discussing the Massachusetts mandatory health insurance program). Weeks describes the Massachusetts health insurance program as “a unique combination of employer incentives, individual mandates, government subsidies, managed competition, tax incentives, and expansion of existing state welfare and federally funded programs.” Id. at 1283. California is one state that has considered implementing a mandatory health insurance program. Id. at 1284, 1299-1301; see also NPR, States Take Up Mandatory Health Coverage, http://www.npr.org/templates/story/story.php?storyId=6783311 (last visited October 20, 2008) (further discussing the California plan in relation to the Massachusetts plan). The Commonwealth has spurred states to consider the individual mandate and play or pay programs as an option. Weeks, supra at 1312. One author points out that the Massachusetts Health Care Mandate Act was not the first individual mandate, rather it was the Dukakis Universal Health Care law that revolutionized the approach to health insurance by mandating, among other things, student coverage. See Rukavina, supra note 5 at 1. Some level
In California, the ultimately unsuccessful statewide insurance program proposed by Republican Governor Arnold Schwarzenegger included an individual mandate. In the State of California, a staggering 6.5 million people were without health insurance. The Governor supported his universal plan with the argument that Californians were subject to a "hidden tax" because their taxes went to pay for the care of the uninsured. The plan proposed a requirement that all residents of California obtain health insurance and that those who had difficulty affording the program would have access to state assistance. Ultimately, the Governor's proposal was unsuccessful, dying in the Senate's Health Committee.

The theory behind the statewide and nationwide resident individual mandate is simple: either place the burden of purchasing health insurance on employers on behalf of their employees or put the burden on individual citizens with the benefit of subsidized programs and reduced rates on such mandated plans if unaffordable to the individual. The candidates in the 2008 presidential election emphasized the strengths and weaknesses of a mandatory system. While on a scale smaller than a state or of health care reform is being considered today in twelve states across the nation. See Isaacs & Schroeder, supra note 5, at 1540.

22 Weeks, supra note 21, at 1299-1301 (comparing the California plan to the Massachusetts plan, noting it also includes a pay or play requirement like Massachusetts's program). See also Governor's healthcare plan appears doomed, L.A. TIMES, Jan. 29, 2008, http://articles.latimes.com/2008/jan/29/local/me-health29 (last visited March 2, 2009).


25 See generally Wright, supra note 24.

26 See Isaacs & Schroeder, supra note 5, at 1539 (commenting on lack of prospects for the doomed California plan).

27 See Raymond, supra note 4, at 4-5 (describing the balance between creditable coverage and affordable coverage); Weeks, supra note 21, at 1284-94 (describing the mechanics of the Massachusetts health insurance program as including an individual mandate, an employer requirement, and affordable health insurance programs); but see Raymond, supra note 4, at 13 (stating the creditable and affordable coverage balancing act was a "complex policy" to implement and create).

28 See e.g. Obama & Biden, supra note 1, at 6 (noting proposed requirement that all children have health insurance coverage); cnn.com, McCain, Obama Go Head to Head in Last Debate (2008),
nationwide mandate for all residents, some colleges, universities, and state legislatures are similarly experimenting with mandated heath insurance programs to ensure students within their respective states and institutions are appropriately insured.  

The election of United States President Obama increases the likelihood that an individual mandate could be implemented at the federal level has substantially increased, where President Obama was clear indicating during his campaign that he favored the consideration of at least a limited individual mandate for children as a solution to the health insurance crisis. As state-mandated and institution-mandated student health insurance gain momentum and acceptance in Massachusetts, the use of these policies will likely expand to other states. The question that remains for the nation, outside of

http://www.cnn.com/2008/POLITICS/10/15/debate.transcript/index.html (transcribing difference of opinion about effect and applicability of fine for employer health insurance mandate);

29 See e.g. University of California, supra note 19 (announcing mandatory health insurance requirement for students in the University of California System); Armstrong Atlantic State University, supra note 2 (explaining Georgia State Universities health insurance requirements); Indiana University, Mandatory Student Health Insurance 2008-2009, http://www.indiana.edu/~uhrs/benefits/student-saa-0809.html (requiring participation in student plan for “Indiana University Student Academic Appointees and Fellowship Recipients” unless comparable coverage proven) (last visited February 18, 2009).

30 See generally Barack Obama & Joe Biden, supra note 1. President Obama noted specifically in a campaign speech that the political atmosphere is ripe for change because “rising costs have caused many more businesses to back reform, and in states from Massachusetts to California, Democratic and Republican governors and legislatures have been way ahead of Washington in passing increasingly bolder initiatives to cover the uninsured and cut costs.” See President Barack Obama, Speech at the University of Iowa (May 29, 2007) (transcript available at http://www.barackobama.com/2007/05/29/cutting_costs_and_covering_ame.php). The preceding Republican administration under George H.W. Bush was reticent to the idea of a health insurance mandate as the solution, favoring instead a series of tax breaks. Mark Trumball and Gregory M. Lamb, Bush’s Gambit on Health Insurance: The President is Urging a Tax-Code Shift to Spread Private Coverage. States Are Moving in Other Directions, CHRISTIAN SCI. MONITOR, January 25, 2007, at 01 (describing President Bush’s plan for healthcare reform in contrast to other proposals). The current economic climate will likely act as a barrier to the implementation of President Obama’s plan. See Boyles, supra note 13 (describing the possible changes to health care reform following the election of President Obama). Writing prior to the 2008 election one author commented: “[p]erhaps a Democratic landslide in 2008 will propel national health care reform, or a spirit of bipartisanship will unexpectedly grip Washington. Short of these remote possibilities, the best means of catalyzing reform may still be the states — despite their financial problems and California’s failure.” Isaacs & Schroeder, supra note 5, at 1539.

31 See generally James H. Moore, Mandatory Student Health Insurance: An Investigation, August 7, 1987 available at http://eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_&ERICExtSearch_SearchValue_0=ED286428&ERICExtSearch_SearchType_0=
the Commonwealth of Massachusetts, is how competing mandates will interact and the policy implications of that interaction.  

Section II

There are two individual health insurance mandates in the Commonwealth of Massachusetts; the first mandate requires all residents to purchase health insurance if it is affordable to them, and the second calls for students to obtain health insurance if they enrolled in post secondary institutions. These laws illustrate the overlap for health insurance mandates with the potential imposition of mandatory health insurance in other states or on the federal scale. The Massachusetts Health Care Mandate Act was approved in April of 2006. The Act required all residents over the age of eighteen to obtain health insurance by July 1, 2007. In the time leading up to its passage and in the years following, the Act was subject to substantial public commentary and debate. Similar to the nationwide uninsured problem, in 2006—before the implementation of
the program—approximately 372,000 residents of Massachusetts were without health insurance.\(^{38}\) The Commonwealth Health Connector Authority ("the Connector Authority") implements and maintains the health insurance component of the program.\(^{39}\) Under the Massachusetts Health Care Mandate Act, individuals are required to obtain health insurance or are subject to tax penalties.\(^{40}\) Residents are required to report their health insurance coverage on their state tax return, and, if they are deemed able to afford health insurance and do not obtain coverage, they will face penalties such as the removal of their personal exemption or a penalty for not disclosing their insurance status.\(^{41}\)

\(^{38}\) Raymond, supra note 4, at 4. This figure is equal to six percent of the population of the commonwealth. Id. In the Commonwealth, 372,000 is the equivalent of six percent of the states 6.35 million person population. Id. at 11.

\(^{39}\) See Title 956 of the Code of Massachusetts Regulations (governing regulations of the Commonwealth Health Connector Authority); see also Raymond, supra note 4, at 5 (noting the creation of the Commonwealth Health Connector Authority). The Health Authority has "broad statutory" authority to provide "affordable health coverage . . . to the uninsured." Id. at 13. Much if not all of the details of the implementation was delegated to the "Connector Board" for implementation, assisted with 25 million dollars of "start-up funding." Id. at 13. The Connector Authority plans to reach a "self financing" state by 2009. Id. at 14. The Connector Authority has been described as "a quasi-governmental risk-pooling mechanism." Weeks, supra note 21, at 1284.

\(^{40}\) See MASS. GEN. LAWS ANN. ch. 111M, § 2(b) (Supp. 1 2008). See also Mass.gov: Department of Revenue, TIR 07-18: Individual Mandate Penalties for Tax Year 2008, http://www.mass.gov/ ?pageID=3orterminal&L=4&L0=Home&L1=Individuals+and+Families&L2=Personal+Income+Tax&L3=Health+Care+Reform+Information&sid=Ador&db=terminalcontent&f= dor_rul_reg_tir_tir_07_18&csid=Ador (last visited October 20, 2008) (describing the implementation of the tax penalties for failure to comply with the Act). The tax penalties can be as high as fifty percent of the health insurance premium the taxpayer should have paid if they were "able" to purchase health insurance according to the Connector. Id. This "individual mandate" is analogous to the requirement that drivers obtain collision insurance should they choose to operate a motor vehicle. Weeks, supra note 21, at 1288.

\(^{41}\) MASS. GEN. LAWS ch. 111M, § 2 (a), (b) (Supp. 1 2008) (providing for tax penalties). Section 2 provides:

(a) As of July 1, 2007, the following individuals age 18 and over shall obtain and maintain creditable coverage so long as it is deemed affordable under the schedule set by the board of the connector, established by chapter 176Q: (1) residents of the commonwealth; or (2) individuals who become residents of the commonwealth within 63 days, in the aggregate. Residents who within 63 days have terminated any prior creditable coverage, shall obtain and maintain creditable coverage within 63 days of such termination. (b) Every person who files or is required to file an individual income tax return as a resident of the
Individuals must only obtain health insurance coverage if that coverage is affordable to them, a determination made by the Connector Authority. There are different levels of insurance available under the Massachusetts Healthcare Mandate Act: MassHealth, Commonwealth Care, Commonwealth Choice, "young adult plans," and through "employer participation." The Connector is responsible for determining what is


commonwealth, either separately or jointly with a spouse, shall indicate on the return, in a manner prescribed by the commissioner of revenue, whether such person (i) had creditable coverage in force for each of the 12 months of the taxable year for which the return is filed as required under paragraph (a) whether covered as an individual or as a named beneficiary of a policy covering multiple individuals, (ii) claims an exemption under section 3, or (iii) had a certificate issued under section 3 of chapter 176Q. If the person fails to indicate or indicates that he did not have such coverage in force, then a penalty shall be assessed on the return. If the person indicates that he had such coverage in force but the commissioner determines, based on the information available to him, that such requirement of paragraph (a) was not met, then the commissioner shall assess the penalty. If in any taxable year, in whole or in part, a taxpayer does not comply with the requirement of paragraph (a), the commissioner shall retain any amount overpaid by the taxpayer for purposes of making payments described in paragraph (c); provided, however, that the amount retained shall not exceed 50 per cent of the minimum insurance premium for creditable coverage available through the commonwealth health insurance connector for which the individual would have qualified during the previous year. The penalty shall be assessed for each of the months the individual did not meet the requirement of paragraph (a); provided, that any lapse in coverage of 63 days or less shall not be counted in calculating the penalty; and, provided further, that nothing in this paragraph shall be considered to authorize the commissioner to retain any amount for such purposes that otherwise would be paid to a claimant agency or agencies as debts described in clauses (i) to (vii), inclusive, of section 13 of chapter 62D. If the amount retained is insufficient to meet the penalty assessed, the commissioner shall notify the taxpayer of the balance due on the penalty and related interest. The commonwealth shall have all enforcement and collection procedures available under chapter 62C to collect any penalties assessed under this section.

Id.

42 Raymond, supra note 4, at 7-8 (noting the relationship between available creditable coverage and affordable coverage).

43 Raymond, supra note 4, at 5-6.
“adequate” and which of these programs a resident can afford.\textsuperscript{44}

MassHealth has certain basic federal requirements to determine eligibility, including income, disability, pregnancy, and employment status.\textsuperscript{45} Commonwealth Care, created by the Connector, insures those who may not be eligible for MassHealth providing “subsidized private insurance coverage” which is available for families earning as high as, but not to exceed, three hundred percent of the federal poverty level.\textsuperscript{46}

\textsuperscript{44} Raymond, supra note 4, at 15 (discussing the process of determining what is “adequate [and] affordable coverage”).

\textsuperscript{45} See 130 MASS. CODE REGS. 516 (1997); 130 MASS. CODE REGS. 501 (1998); 130 MASS. CODE REGS. 503 (2001); 130 MASS. CODE REGS. 505 (2008); 130 MASS. CODE REGS. 517 (1999); see also Mass.gov: Health and Human Services, Basic Eligibility, http://www.mass.gov/?pageID=eohhs2hp=&L=1&L0=Home&sid=Eeohhs2 (select “For Consumers” tab, select “Apply for MassHealth,” select “Applicants Under Age 65,” select “Basic Eligibility”) (stating basic eligibility requirements) (last visited Mar. 10, 2009). Individuals wishing to obtain MassHealth must apply to the MassHealth Enrollment Center, which determines your eligibility for the program. Mass.gov: Health and Human Services, How to Apply, http://www.mass.gov/?pageID=eohhs2terminal&L=5&L0=Home&L1=Consumer&L2=Insurance+(including+Mass+Health)&L3=Apply+for+MassHealth+Coverage&L4=Applicants+Under+Age+65+and+Families&sid=Eeohhs2&b=terminalcontent&f=masshealth_consumer_applicant_under65_apply&csid=Eeohhs2 (describing application process) (last visited Mar. 10, 2009). MassHealth’s strict guidelines were relaxed very slightly with the passage of the Act. Raymond, supra note 4, at 5. Specifically, the Act increased child eligibility, increased eligibility for the “Insurance Partnership” which supports “low income employees and employers” and removed caps on certain groups including those with HIV. Id. To meet the first threshold of eligibility, adults under age sixty-five must be pregnant, parents, disabled, “HIV positive, [e]mployees of or self-employed ‘qualified employers,’ long-term unemployed, recipients of EAEDC, or recipients of refugee resettlement assistance.” See Massachusetts Law Reform Institute and Massachusetts Continuing Legal Education, Inc., MassHealth Advocacy Guide, 90 (2006). MassHealth is referred to as the “payor of last resort” that will only provide payment if there is no other available source of payment. 130 MASS. CODE REGS. 517.008 (1999).

\textsuperscript{46} Raymond, supra note 4, at 5; see 956 MASS. CODE REGS. 3.05(3) (2008) (stating eligibility for Plan Types 1-3 that are not to exceed 100%, 200%, and 300% percent of the Federal Poverty Level, respectively); 130 MASS. CODE REGS. 506.00 et seq (2007) (containing MassHealth Financial eligibility); Commonwealth Connector, Welcome to Commonwealth Care: Overview, http://www.mahealthconnector.org/portal/site/connector/template.MAXIMIZE/menuitem.3ef8fb03b7fa1a e4a7ca7738674666a0c/?javax.portlet.tpst=2fdfb140904d489c98781176033468a0c_ws=MX&javax.portlet.prp-2fdfb140904d489c98781176033468a0c_view=content&javax.portlet.prp-2fdfb140904d489c98781176033468a0c_docName=CommCareOverview&javax.portlet.prp-2fdfb140904d489c8781176033468a0c_folderPath=/About%/CommonwealthCare&id=CommCareOverview&javax.portlet.endCacheTok=com.vignette.cachetoken (noting the official name of the program the, Commonwealth Care Health Insurance Program) (last visited Mar. 10, 2009). For the purpose of the evaluation of Commonwealth Care eligibility, the Federal Poverty Level will be determined by a calculation in 956 MASS. CODE REGS. 3.05(4)(a)–
Commonwealth Choice, a private insurance program made available through the Connector and private brokers, provides non-subsidized coverage that fulfills the mandate while remaining affordable. Other customer paid programs are the "young adult plans," which are programs accessible through the Connector that are unsubsidized but available at a lower cost for a less established age group. Finally, the Massachusetts Health Care Mandate Act creates employer plans, which fine employers unless they provide contributions to employee programs. In 2007, one year after the implementation of some of these programs, there were 122,000 new enrollees in MassHealth and Commonwealth Care programs in Massachusetts, approximately one third of the residents who had previously been uninsured.

Preceding the passage of the Massachusetts Health Care Mandate Act is the Massachusetts Student Mandate Act, which requires that all students in institutions of higher education maintain health insurance coverage. The Massachusetts Student Mandate Act requires that "[e]very full-time and part-time student enrolled in a public or independent institution of higher learning located in the Commonwealth shall participate in a qualifying student health insurance program." The Qualified Student Health Insurance Programs ("QSHIPs") vary in cost among institutions, ranging from under $(c)$ (2008) as applied to the federal standards in the Federal Register. 956 MASS. CODE. REGS. 3.05(3) (2008).

Raymond, supra note 4, at 6.

The Act also aims to benefit young adults by permitting them to remain on the health insurance programs purchased by their parents for two years after they lose dependent status up until the age of 26. Id. at 1286.

Raymond, supra note 4, at 6. The Act also aims to benefit young adults by permitting them to remain on the health insurance programs purchased by their parents for two years after they lose dependent status up until the age of 26. Id. at 1286.

Raymond, supra note 4, at 6-7 (describing "pay or play" programs, fines, and so-called Section 125 pre-tax insurance payment plans); see also Weeks, supra note 21, at 1286-87 (explaining the "Pay or Play" requirement of the Massachusetts system). Essentially, the Act requires "employers with 11 or more employees [must] establish and maintain health insurance 'cafeteria plans,' consistent with state requirements and U.S. Internal Revenue Code § 125 " which requires that health insurance contribution payments are taken from "pre-tax dollars." Id. at 1286. Failure for the employer to pay into the programs of their employees results in a fine of up to $295.00 for each employee. Id. at 1287.

Raymond, supra note 4, at 2 (stating that the 122,000 new enrollees were approximately one third of the previously uninsured 372,000 uninsured residents). As of March 2007 following the implementation of the Massachusetts Health Insurance Mandate, the "total MassHealth enrollment increased by almost 53,000." Id. By May, 2007, over 69,000 low income residents of the Commonwealth were enrolled in Commonwealth Care programs. Id.

MASS. GEN. LAWS ch. 15A, § 18 (2002); Rukavina, supra note 5, at 1 (emphasizing that the mandatory student mandate was the first individual mandate preceding the statewide individual mandate).

MASS. GEN. LAWS ch.15A, § 18 (2002).
$700 a year to over $2,000. Once deductibles, co-payments, and caps on services are considered, these figures can rise dramatically.

Programs must maintain certain standards to be eligible QSHIPs. The Division of Health Care Finance and Policy is responsible for defining the parameters of a ‘qualifying’ program and for implementing the statute. Colleges and universities in Massachusetts are responsible for ensuring that their students obtain appropriate coverage. The qualified programs must provide “comprehensive coverage of health services.” Colleges and Universities may do this by designating a qualified provider or by permitting students with their own programs to sign a waiver designating the

53 Rukavina, supra note 5, at 3 (discussing the affordability of QSHIP plans and programs). Of the varieties of programs offered, 7% were under $700, 27% cost between $700 and $999, 47% cost between $1,000 and $1,999, and 19% cost a minimum of $2,000. Id. at 3.
54 Rukavina, supra note 5, at 3-4.
56 MASS. GEN. LAWS ch. 15A, § 18 (2002); see also 114.6 MASS. CODE REGS. 3.00 (2006) (regulating student health insurance program).
57 MASS. GEN. LAWS ch. 15A, § 18 (2002). The DH regulations require the “Institutions of Higher Education” to require students “to participate in a qualifying student health insurance program” or a comparable program. 114.6 MASS. CODE REGS. 3.03(2) (2006).
58 114 MASS. CODE REGS. 3.04(1) (2006). The “comprehensive coverage” is defined to include “preventive and primary care, emergency services, surgical services, hospitalization benefits, ambulatory patient services, and mental health services.” Id. For example, the University of Massachusetts at Amherst offers a policy through Aetna that includes many benefits that comply with the QSHIP requirements. See generally Aetna, Benefit Details, University of Massachusetts-Amherst, 2008-2009 Student Health Insurance Plan Brochure, available at http://www.aetnastudenthealth.com/schools/umamherst/brochure0809.pdf (noting the cost and billing arrangement of the plan); see generally University of Massachusetts, University Health Services, http://www.umass.edu/uhs/insurance/ship/ (providing a general description of the University’s policy) (last visited Mar. 10, 2009).
comparability of their existing coverage to the coverage mandated by the statute.\textsuperscript{59} The Division of Health Care Finance and Policy has the authority to investigate institutions to ensure compliance with the regulations, with failure to comply punishable by a fine.\textsuperscript{60}

Because of Massachusetts's unique position as a state with both a mandated student health insurance requirement and a mandated citizen health insurance requirement, it provides a case study for the relationship between the two.\textsuperscript{61} College students have restricted access to MassHealth and are ineligible for Commonwealth Care.\textsuperscript{62} Thus, a student who is ineligible for MassHealth, but who would otherwise be below the income guidelines, by virtue of their status as a student in the Commonwealth of Massachusetts, would be unable to obtain Commonwealth Care coverage; they would instead be obligated to pay more for their insurance through the QSHIP offered by their school.\textsuperscript{63} This requirement includes even non-full time students.\textsuperscript{64}

\begin{footnotes}
\item[59] 114.6 MASS. CODE REGS. 3.04 (2006). The waiver can be accomplished by the student as ensured by the school through having the student of the institution "(1) certify, in writing, at least annually, as part of the institution's usual registration process that they are participating in a health benefit plan with comparable coverage and (2) to provide documentation of such coverage." 114.6 MASS. CODE REGS. 3.03(1) (2006). It is the responsibility of the student to determine whether their insurance is qualified as "comparable." 114.6 MASS. CODE REGS. 3.05(2)(d) (2006).
\item[60] 114.6 MASS. CODE REGS 3.08 (1)(2) (2006); 114.6 MASS. CODE REGS. 3.11 (2006) (stating the authority of the Division to investigate and penalize institutions for failure to comply).
\item[61] Supra note 33 and accompanying text (stating that Massachusetts has an overlapping mandate to obtain insurance if you are a resident of Massachusetts or if you attend a Massachusetts institution of higher education).
\item[62] See 114.6 MASS. CODE REGS. 3.05(2)(b) (2006); 965 MASS. CODE REGS. 3.09 (2008) (stating that students are not eligible for Commonwealth Care if they are eligible for QSHIP coverage); MassHealth Operations Memo, supra note 7, at 3, 7-8 (clarifying to benefit annalists that students eligible for QSHIP coverage as students are ineligible for coverage under the Commonwealth Connector); Commonwealth Connector, Find Insurance: Individuals & Families: Frequently Asked Questions, http://www.mahealthconnector.org/portal/site/connector/menuitem.a70bc7f6f47d7468a0c/?bShown=deefaulr4q11 (noting students who can obtain QSHIP insurance or whose school offers another such program cannot obtain Commonwealth Care insurance) (last visited Mar. 10, 2009) [hereinafter Commonwealth Connector Find Insurance].
\item[63] See supra note 62 and accompanying text (noting students ineligible for Commonwealth Care if eligible for QSHIP); MASS. GEN. LAWS ch. 15A, § 18 (2002) (requiring all students to obtain health insurance). The QSHIP is an innovative and comprehensive piece of legislation that is not without critique. See generally Rukavina, supra note 5. College students are rarely eligible for MassHealth. See Massachusetts Law Reform Institute and Massachusetts Continuing Legal Education, Inc., supra note 45, at 70. College students can be covered by MassHealth Standard if they are under nineteen, a parent, or a person with a disability who qualifies, however, they cannot get MassHealth Essential if their school provides insurance. Id.
\end{footnotes}
The overlap between the student and individual mandates are apparent where a marketing goal for the Connector Authority is to appeal to college students. The board, which was granted broad authority under the statute made the policy decision to exclude resident students in the Commonwealth Care program. The Board’s policy choice operates to the detriment of citizen students who would otherwise be income eligible. If mandatory health insurance with a subsidized insurance program similar to that of Massachusetts is implemented, other states, or the nation as a whole, would have the opportunity to choose to include students in the benefited class.

Section III

In light of the changing political climate in the United States, the implementation of a health insurance mandate to provide universal healthcare on the federal level is now a possibility that has heretofore seemed farfetched. The relative success of the Massachusetts model similarly may encourage the development of a

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64 See 114.6 Mass. Code Regs. 3.02 (2006) (defining “part-time” student as “[a] student who participates in at least seventy-five percent of the academic requirements for full-time students”). “College or university students who are offered health insurance under the QSHIP or another qualified student health insurance plan are not eligible for a low or no-cost Commonwealth Care plan.” Commonwealth Connector Find Insurance, supra note 62.

65 Raymond, supra note 4, at 24 (discussing the Connector Authority’s marketing goals). “[C]ollege and university students were and continue to be required to purchase health insurance” in the Commonwealth. Weeks, supra note 21, at 1296.

66 See 965 Mass. Code Regs. 3.09(2)(c) (2008) (indicating that students with available QSHIP are ineligible for Commonwealth Care); Raymond, supra note 4, at 1, 13-15. See Commonwealth Connector Find Insurance, supra note 62 at http://www.mahealthconnector.org/portal/site/connector/menutitemafc6a36a62ec1a50d92f6474680a0c/?fistShown=default#q11 (stating students may not obtain Commonwealth Care but are eligible for Commonwealth Choice); Raymond, supra note 4, at 13 (noting deference to the Board in deciding how to implement the program).


68 See Isaacs & Schroeder, supra note 5, at 1540 (noting the role of states as models for potential federal reform). See also Weeks, supra note 21, at 1299-1301 (noting the similarities between the California and the Massachusetts plans).

69 See supra note 25 and accompanying text (describing likelihood of President Barack Obama to implement a health insurance mandate to accomplish healthcare reform). Under President George H.W. Bush, the health insurance mandate was far from an option where instead he favored tax deductions to support individual coverage. See Trumbull & Lam, supra note 29 (describing President Bush’s plan to alter the Internal Revenue Code to accommodate purchase of health insurance based on free market competition). However, the declining economy may make the requisite subsidy impossible. See Boyles, supra note 13 (discussing the problems the Obama health care plan may face in the unstable U.S. economy).
universal mandate at the state level in other states. As post-secondary education becomes central to our economy, the number of students exposed to institutional or legislative mandates will only grow as student mandates become more popular. While the possibility of a health insurance mandate for all residents of the United States is far from a fait accompli due to the enormous controversy over the issue, the designation of a class of individuals subject to a mandate via federal statute, particularly minors, is conceivable, in the near future. Conversely, states could still implement a universal mandate, as accomplished in Massachusetts and attempted in California. If a state or the federal government adopts a mandate for residents, and the resident is a student subject to a mandate from either their school or the government, that resident-student should have the option of the less expensive policy. Having such an option would help to encourage post secondary education by promoting affordability.

Given the smaller scale of state mandates, it is more likely that individual states will adopt universal insurance coverage requirements utilizing a mandate than the federal government because the mandate would be more feasible on a smaller scale. This could result in the same disparate treatment that is present in Massachusetts. If a state

70 See Raymond, supra note 4, at 2 (stating number of residents who have obtained health insurance though the subsidized programs).
71 See supra note 2 and accompanying text (discussing the use of legislation and institutional policies to require post secondary and graduate students to obtain health insurance); supra note 12 (discussing the long-term economic benefits of obtaining a postsecondary degree).
72 See Obama & Biden, supra note 1 (discussing the Obama Healthcare Plan); see also supra note 30 (discussing the Bush Administration’s desire for tax relief as an alternative to a mandate).
73 See supra note 3 and accompanying text (describing the use of Massachusetts as a model for other states and the nation); see also President Elect Barack Obama, supra note 29 (noting in his famous healthcare speech the actions of Massachusetts and California to implement universal healthcare). Two authors suggest “three paths toward reform:” an employer mandate requiring the employer to provide insurance, a single payer system with a more accessible Medicare system, and the use of the free market and tax cuts to expand coverage. See Trumball & Lamb, supra note 29.
74 See supra note 5 and accompanying text; infra notes 82-88 and accompanying text (explaining inequality of provisions as applied).
75 See supra note 5 and accompanying text (noting the disparity of treatment of students and non-student residents who do have the benefit of subsidized programs); infra notes 76-81 (discussing ways to make health insurance affordable for students).
76 See supra note 21 and accompanying text (describing the adoption of a mandatory scheme in Massachusetts); but see supra notes 22-26 and accompanying text (illustrating failure of mandate in California).
77 See infra notes 81-84 and accompanying text (regarding the different cost of health insurance for students and non-students); see also supra note 1 (stating the differing views regarding the use of universal healthcare).
adopts a universal plan, the legislature or the governing agency has the choice to allow students to receive the subsidized insurance or exclude them if they believe their future earning capacity justifies their ineligibility. Individuals who meet the financial requirements should be eligible for the same health insurance as those who do not seek post secondary education for two main reasons. First, individuals who receive the subsidized rate in their state prior to attendance in a university should not have to surrender that rate due to their efforts to improve their lives by advancing their education. Second, it is simply a beneficial policy for a nation to do all within its power to encourage postsecondary education for those who face economic challenges.

Using the Massachusetts model of mandated health insurance for residents and students as an example, the disparate cost for students as opposed to non-student residents is apparent. For the 2008-2009 academic year, a nineteen-year-old at the University of Massachusetts at Amherst with a part-time job earning $8,320, would be required to pay $2,322 for health insurance when it is purchased through the institution’s program as they are ineligible to apply for Commonwealth Care. Conversely, nineteen-year-old resident of Massachusetts who is not a student but is employed part-time at a minimum wage job earning $8,320 each year would be eligible to apply for the subsidized Commonwealth Care.

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78 See supra note 62 and accompanying text (affirming that students are not eligible for the subsidized Commonwealth Care program).
79 See infra notes 80 and 81 and accompanying text (stating reasons why undergraduate and university students should be included in mandate); see also supra notes 18 and 61.
80 See supra note 62 and accompanying text (providing for the ineligibility of students for the Commonwealth Care program).
81 See supra note 18 (discussing cost of undergraduate education). While students seeking professional degrees are in a similar position as undergraduate students who elected to obtain an education, the professional degree has not yet reached the same level of economic necessity as has the undergraduate degree. See supra note 2 (describing employment opportunities for non-college graduates).
82 See MassHealth Operations Memo, supra note 7, at 3, 7-8 (noting student ineligibility for Commonwealth Care); see supra note 6-7 (discussing the two statutes in Massachusetts, one for residents, other for students discounting residency).
83 See Aetna, Benefit Details, University of Massachusetts-Amherst, supra note 58, at 7 (noting the cost and billing arrangement of the plan). *The University of Massachusetts at Amherst's Student Health Insurance Plan (SHIP) is offered through Aetna Student Health.* University of Massachusetts, University Health Services, supra note 58 (announcing and describing policy for students). Students are automatically enrolled in the program if they take five or more credits at the institution. Id. The school notes specifically that they do not deem Commonwealth Choice plans “comparable” to the SHIP plan, requiring students to obtain SHIP coverage. Id.
84 See Commonwealth Connector, supra note 46, at http://www.mahealthconnector.org (select “Young Adult Plans,” select “your family size,” select “one” which will bring up page noting
Thus, by virtue of the fact that the student is attending classes at a college or university, the individual who is attending school could pay as much as $2,322 more than the individual who is not a student for the annual cost of the plan, even if their income is the same. In fact, the non-student resident could make up to $31,212 and still be eligible for Commonwealth Care. There is merit to the argument that the student who attends an institution of post secondary education will ultimately be more economically successful than the resident who does not attend such an institution. This same student in the present unstable economy and job market, however, could be eligible for Commonwealth Care programs if he or she earns below the threshold amount after graduating from an undergraduate institution.

If there is mandate on the federal level, it is less likely to be universal. A federal mandate is more likely to be limited to a certain class of individuals due to the controversy over the increased role of the federal government. There is also debate surrounding the mandate on the national scale and also because of the current economic climate. Within President Obama's healthcare reform plan, is his proposal that

potential eligibility for Commonwealth Choice providing eligibility guidelines for including age of nineteen or older, income of under $31,212 annually, and citizenship).

Compare 956 MASS. CODE REGS. 3.09(2)(c) (2008) (stating students are considered uninsured for purpose of Commonwealth Care eligibility) and 130 MASS. CODE REGS. 506.00 et seq (2007) and Massachusetts Law Reform Institute and Massachusetts Continuing Legal Education, Inc., supra note 45, at 193, 217 (discussing costs of premiums in Commonwealth Care) with Aetna, supra note 58, at 7 (describing cost of Aetna coverage at University of Massachusetts at Amherst). These figures represent the cost of the plan itself and not the additional out of pocket expenses that are often incurred. See Rukavina, supra note 5, at 3-4.

See Commonwealth Connector, supra note 45, at http://www.mahealthconnector.org (select “Young Adult Plans,” select ‘your family size,” select “one” ) (noting potential eligibility for Commonwealth Choice providing eligibility guidelines for including age of nineteen or older, income of under $31,212 annually, and citizenship). This figure reflects the 2008 rate and will be updated March 1, 2009. Id.

See supra note 7 (discussing the economic benefits to completing a college education); see The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earning, supra note 2, at 2 (noting average college graduate earns $45,400 annually in 1999 dollars). While college graduates do ultimately fare more favorably than those without comparable degrees, in this unstable economy, many graduates and non-graduates are searching for employment. See generally Goodman, supra note 13 (discussing increased unemployment rate in the U.S. in October 2008).

See Commonwealth Connector, supra note 45, at http://www.mahealthconnector.org (select “young adult” plan” or “individual” plan).

See supra note 1 (discussing the varied responses of the federal government).

See supra note 1.

See supra notes 1, 3 (noting controversy over health insurance mandate).
children be required to obtain health insurance. This mandate could be used to provide some students entering college prior to the age of majority coverage at a reduced rate until they age out of the program. President Obama’s proposed reform plan permits students to remain on their parent’s plan until age twenty-five, which could benefit some students, but hamper those students who are emancipated or whose parents cannot afford a health insurance plan.

The implementation of a mandate of subsidized coverage for eligible college students is feasible at the federal level through at least two mechanisms. First, undergraduate students could be an independently benefited class. Second, the students could be attached by definition to another benefited class, like children. It would be appropriate to designate college and university students as a benefited class for the same reason that there is currently a mandate for students at colleges and universities across the country: to enable students to remain in their educational programs if they become sick, and to prevent them from becoming sick in the first place. This coverage may be an inducement to attend college by making it more affordable in a small yet substantial way, particularly where increasingly more schools require insurance.

College and university students could be connected to the ‘child mandate’ if

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92 See Obama & Biden, supra note 1, at 5 (discussing President Elect/President Barack Obama’s healthcare reform plan). It is not clear from his stated plan if the children who are required coverage will do so at the expense of the government or the parent. See Obama & Biden, supra note 1, at 5-6.

93 See Obama & Biden, supra note 1, at 5-6 (briefly describing plan to make healthcare affordable, specifically for children).

94 See Obama & Biden, supra note 1, at 6 (proposing children may remain covered by their parent’s insurance until age twenty-five). Massachusetts has a similar program which allows individuals to remain on their parent’s insurance coverage “for two additional years after loss of dependent status, or until age 25.” Weeks, supra note 21, at 1293.

95 Compare Obama & Biden, supra note 1, at 5-6 (discussing coverage of children) with Raymond, supra note 4, at 5 and 956 MASS. CODE REGS. 3.05(3) (2008) (stating eligibility for different plans) and 130 MASS. CODE REGS. 506.00 et seq (2007) (containing MassHealth Financial eligibility).

96 See Obama & Biden, supra note 1, at 5-6 (designating children as a class that should be mandated to be insured, presumably accompanied by a subsidized program).

97 See Obama & Biden, supra note 1, at 5-6 (noting children could be mandated to obtain health insurance); see supra note 46 and accompanying text (making individuals who earn up to 300% of the federal poverty level eligible for the subsidized Commonwealth Care program).

98 See supra note 19 and accompanying text (describing the consequence of students being uninsured).

99 See supra note 18 and accompanying text (discussing the expense of a college education); see supra note 19 and accompanying text (noting legislative and institutional requirements that students obtain health insurance to avoid consequences of lack of coverage).
President Obama's proposed plan is enacted and if that plan is accompanied by a subsidy. This could be accomplished by amending the plan as stated to include not only children, but perhaps also those students who choose to attend a college or university within a given period after the date that they receive a high school diploma or equivalency, even if over the age of minority at the time of attendance. A change to allow students to be covered as if they were minors could be supported as an education inducement because it would reduce the amounts taken out in loans by students. If the legislation and regulations are passed to create a subsidized insurance mandate there are different ways students could be incorporated into that policy. First, the mandate could cover students as if they are minors, though over the age of minority. Second, students could be included as an entirely independently benefited class like those classes included in MassHealth and other programs. The coverage of students could be made available only to those who truly cannot afford coverage by creating stringent income limits.

The argument against students receiving a benefit is that students are able to pay for their health insurance with loans and will have a higher income to pay off those loans once they graduate. However, in light of the current economic downturn, loans are harder to come by, and often when obtained, the loan has a high interest rate. Moreover, the high unemployment rate is making the job market more competitive even for those students who have graduated with a post-secondary degree. Many students

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100 See Obama & Biden, supra note 1, at 5-6 (discussing possibility of subsidized insurance plan to benefit children if a mandate is imposed).
101 See Obama & Biden, supra note 1 (outlining the Obama/Biden healthcare plan).
102 See supra note 18 and accompanying text (discussing cost of attending college).
103 See Memorandum from Russ Kulp, supra note 7, at 3, 7-8 (excluding students from status as uninsured).
104 See Obama & Biden, supra note 1, at 5-6 (noting potential plan to cover children).
105 See Massachusetts Law Reform Institute and Massachusetts Continuing Legal Education, Inc., supra note 45, at 90.
106 See Commonwealth Connector, supra note 46, at http://www.mahealthconnector.org (select “Young Adult Plans,” select “your family size,” notes page) (noting potential eligibility for Commonwealth Choice providing eligibility guidelines for including age of nineteen or older, income of under $31,212 annually, and citizenship).
107 See The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earning, supra note 2, at 2 (providing analysis which found increased income of college graduates and those with professional degrees); see supra note 19 and accompanying text (discussing the cost and affordability of student health insurance coverage).
108 See supra note 2 (discussing the difficulty in obtaining loans for education).
109 See Goodman, supra note 13 (noting 6.5% unemployment rate in October 2008).
face the prospect of graduating without a job because of the saturated labor market.\textsuperscript{110} As a result, the graduate could likely qualify for the subsidized health insurance, while paying off the cost of their previous plan that was financed through student loans.\textsuperscript{111}

The situation often arises where the student at a university does not have an income through employment, but rather, receives support from his or her family.\textsuperscript{112} The scenario where a student would receive subsidized health insurance where they appear to be low-income but are in fact economically secure is avoidable by requiring certain information when the student applies for benefits from their institution.\textsuperscript{113} For example, students could be required to disclose parental income information in their insurance application form, information that would be readily available through financial aid applications that needy students would already fill out.\textsuperscript{114} Through this safeguard, the inclusion of students among the benefited class could be limited to those students who truly cannot afford coverage.\textsuperscript{115} This limitation would prevent students whose parents could afford to pay their insurance costs (or who are otherwise eligible for health insurance under their parent's health care plan) from benefiting from the policy intended for low-income students.\textsuperscript{116}Admittedly, difficulty would arise in the case of parents who can afford to pay for their child's insurance, but who refuse, this could, leave some students ineligible on paper but not provided for, in reality.\textsuperscript{117} This is, however, the same risk that arises in the case of financial aid applications in the oft-used Free

\begin{footnotes}
\textsuperscript{110} See Goodman, supra note 13 (noting unemployment rate in the United States); supra note 2 (describing substantial loans held by students).
\textsuperscript{111} See Goodman, supra note 13; see also supra note 2.
\textsuperscript{112} Glater, supra note 2 (noting parents who pay for child's education).
\textsuperscript{113} See generally FAFSA on The Web Worksheet, supra note 18 (illustrating a request for financial information of student applying for governmental aid).
\textsuperscript{114} See generally FAFSA on The Web Worksheet, supra note 18 (providing an example of a federal financial aid for that provides a mechanism for obtaining parental information).
\textsuperscript{115} See Commonwealth Connector, supra note 46, at http://www.mahealthconnector.org (select "Young Adult Plans," select "your family size," notes page) (noting potential eligibility for Commonwealth Choice providing eligibility guidelines for including age of nineteen or older, income of under $31,212 annually, and citizenship).
\textsuperscript{116} See Rukavina, supra note 5, at 14 (suggesting a safeguard prohibiting those students who can afford coverage from obtaining a government subsidy); FAFSA on The Web Worksheet, supra note 18 (illustrating a method of determining dependence of student child and consideration of that parental income). In the state universal mandate, the universal program will likely only be imposed on residents leaving the issue of health insurance coverage for non-resident students up to the controlling institution or legislative policy. See supra note 2 and accompanying text (noting institutional and legislative requirements that students obtain insurance coverage).
\textsuperscript{117} See FAFSA on The Web Worksheet, supra note 18 (requiring financial information of parents regardless of actual support).
\end{footnotes}
Application for Federal Student Aid.\textsuperscript{118} This inequitable result may be unavoidable where the risk of parents' fraudulently claiming that they decline payment for their child is too high.\textsuperscript{119}

The rate that students are required to pay through their mandatory programs is not exorbitant when compared to the payments of individual coverage across the country.\textsuperscript{120} In Massachusetts, some programs that qualify as QSHIP approved coverage cost a mere \$700 annually.\textsuperscript{121} At one university, students can pay as little as \$830 for the school's mandatory program.\textsuperscript{122} Additionally, it is the choice of the student to attend a post secondary institution full time; they could instead attend a university part time, and obtain employment and with their income considered, they may still be eligible for a state or federally subsidized program.\textsuperscript{123}

While the subsidized health insurance issue is polarizing on ideological grounds, in these trying economic times, a compromise in the Commonwealth could temporarily be struck so that students enrolled, or to be enrolled, in post secondary institutions could temporarily be allowed access to the lower rate through Commonwealth Care by removing the policy of students eligible for QSHIP being deemed uninsured for purposes of the applications.\textsuperscript{124} To accomplish this change, the Connector Authority regulation prohibiting students with access to a QSHIP are not deemed uninsured and therefore ineligible for Commonwealth Care, can simply be removed or suspended by the agency.\textsuperscript{125} In the Commonwealth and across the country, student loans are increasingly difficult to obtain.\textsuperscript{126} Because of this difficulty, the argument that the expense of mandatory health insurance can simply be bundled in with other expenses

\textsuperscript{118} See FAFSA on The Web Worksheet, \textit{supra} note 18 (requiring financial information of parents regardless of actual support).

\textsuperscript{119} See FAFSA on The Web Worksheet, \textit{supra} note 18.

\textsuperscript{120} Compare \textit{supra} note 53 and accompanying text (discussing cost of student health insurance coverage), \textit{with Yearly Premiums for Family Health Coverage Rise, supra} note 15 (stating increase in family and individual premiums in 2008).

\textsuperscript{121} See Rukavina, \textit{supra} note 5, at 3 (citing range of costs of student programs in the Commonwealth of Massachusetts).

\textsuperscript{122} Armstrong Atlantic State University, \textit{supra} note 2, at 1 (providing student rates that vary depending if coverage is voluntary or mandatory).

\textsuperscript{123} See \textit{supra} Raymond, \textit{supra} note 4, at 5; 956 MASS. CODE REGS. 3.05(3) (2008) (regulations for income eligibility); Massachusetts Law Reform Institute and Massachusetts Continuing Legal Education, Inc., \textit{supra} note 45, at 90, 217.

\textsuperscript{124} 956 MASS. CODE REGS. 3.09(2)(c) (2008).

\textsuperscript{125} See \textit{supra} note 7.

\textsuperscript{126} See Schworm & Healey, \textit{supra} note 2 (illustrating unavailability of student loans in Massachusetts).
covered by readily available student loans is no longer compelling. The bar on student
access to Commonwealth Care, if removed, may require a simple check to determine if
the student is a dependent, something that the state could achieve by requiring the
students' financial aid application and materials, as part of the process of applying for
Commonwealth care as discussed above. While the states are in financial distress in
the current economic downturn, the plight of individual students is more severe.

Section IV

Today, postsecondary students in colleges and universities across the country
are feeling the pinch of financial instability more than ever due to the scarcity of student
loans and funding. Affording a college education is becoming increasingly expensive, as
the cost of tuition, housing, books, and food escalate. Now health insurance is often
required on top of all other expenses. Once manageable student loans are now
increasingly hard to obtain, and when secured, are an enormous burden on students
entering a bleak job market. Where mandated health insurance programs have gained
popularity at the institutional level, and the possibility of mandates and subsidies are
conceivable at the state and federal levels, post secondary students should be considered
as among those who are considered for benefit. Those students who sought to improve
their marketability in this competitive job market and who would otherwise be eligible
for subsidized plans without falling deeper into debt, should not be penalized for their
efforts to advance themselves through additional education.

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127 See Schworm & Healey, supra note 2 (illustrating unavailability of student loans in
Massachusetts); see William & Mary, supra note 19 (noting option of use of federal student loans
to pay for school mandated health insurance coverage)
128 See supra note 18.
129 See Isaacs & Schroder, supra note 5, at 1538 (referring to cost of reform for states who are
operating on a budget deficit). In February of 2008, The Connector and MassHealth Operations
altered the Medical Benefit Request form so that it could restrict the access to the subsidized
Commonwealth Care when other subsidized programs are available, emphasizing ineligibility of
students. MassHealth Operations Memo, supra note 7, at 1, 3.