

*Office of the Vermont Secretary of State*

## **Vermont State Archives**

**Veto Message: Governor Douglas;  
2005 (H.524)**

**An Act Relating to Universal Access to Health Care in Vermont**

STATE OF VERMONT  
Executive Department.  
Montpelier, Vt., June 22, 2005

### **Message from the Governor**

Governor Jim Douglas today issued a formal 17-page message to the Clerk of the House outlining 23 principal reasons for returning without his signature, H.524 to the General Assembly.

The full text of the Governor's veto message follows.

### **Text of Communication from Governor**

June 22, 2005

The Honorable Donald G. Milne  
Clerk of the House of Representatives  
State House  
Montpelier, Vermont 05633-5401

Dear Mr. Milne:

I am returning H.524, *An Act Relating to Universal Access to Health Care in Vermont*, without my signature because of my objections described herein.

I remain fully committed to working collaboratively with all interested parties to achieve thoughtful and lasting reform of our health care system. Our system does face many complex and difficult challenges, but we must meet these challenges.

Overall health care spending in Vermont and the nation is

increasing at an unsustainable rate. Unless we take time to enact contemplative and meaningful reforms, higher health care costs are likely to result in a dramatically reduced public capacity to offer coverage in existing programs like Medicaid. These same pressures are likely to result in reduced employee participation rates, fewer private options and greater numbers of uninsured Vermonters.

Slightly more than 90 percent of Vermonters are insured, and while Vermont's insured rate is among the highest in the nation, I will not be satisfied until all Vermonters have access to health care coverage they can afford.

There is much that is commendable about Vermont's health care system—most notably the efforts of our dedicated providers—but there is still much that can be done to improve quality, enhance safety and lower costs.

As we move forward with necessary reforms, it is important that the means chosen to address these problems are consistent with the values and expectations of the people of this state, and are financially sustainable for the employees, employers and families paying taxes.

Accordingly, last year I set forth the principles that should guide efforts to achieve meaningful reform of Vermont's health care system:

- Our efforts to achieve universal access to affordable health care coverage for all Vermonters must include policies that reduce costs for Vermonters who are currently insured and struggling to keep up with ever-increasing insurance premiums.
- Meaningful health care reform must be comprehensive and patient-centered, putting decisions in the hands of doctors and patients, not politicians and bureaucrats.
- Our reforms must increase choices and encourage a significant degree of personal responsibility.
- Reform of both public and private health care coverage systems must be financially sustainable and supportive of a

prosperous economy.

I am pleased that the General Assembly agreed with many of my Administration's initiatives, which will result in real progress and help Vermont turn its attention back toward the need to lower costs.

Two related initiatives included in the fiscal year 2006 budget—the Chronic Care and Health Care Information Technology initiatives—will positively impact both the cost and quality of care delivered in Vermont over time. Both efforts have tremendous promise for improving Vermont's health care infrastructure.

Two provisions included in H.524—the Healthy Lifestyles Discount and the Consumer Price and Quality Information Program—would provide incentives for individual Vermonters to engage in healthy behavior, give them the tools they need to make cost-effective choices about health care and also help drive down cost and improve quality.

I regret, however, that in most other respects H.524 falls far short of my Administration's goals and principles for meaningful health care reform.

H.524 would create a new, government-run, taxpayer financed health care program that would lead Vermont toward a system of fewer choices, fewer benefits and fewer health care providers.

H.524 would also impose new payroll taxes on small businesses and non-profit organizations, and a regressive income tax surcharge on the working poor to finance the limited health care coverage it proposes. Such a financing mechanism punishes low and moderate-income workers who are least able to afford these regressive taxes.

This health care tax proposal would be extraordinarily harmful to Vermont's small businesses and economy, and fails to account for the necessary revenue needed for its intended expansion in future years. Moreover, throughout the legislative process concerns of health care providers, private sector employers, individual

residents, and Executive Branch officials were ignored.

The bill also fails to address the so-called Wal-Mart issue.

In fact, the Legislature's proposal creates a tax scheme that benefits Wal-Mart sized multi-state and multi-national corporations at the expense of Vermont's small, homegrown businesses.

The measure fails to adequately define key phrases and intent, calls for unrealistic and unfunded demands on government personnel and leaves far too many questions unanswered.

In addition, and somewhat ironically, H.524 calls for a study commission intended to justify the millions of dollars in decisions the Legislature has already made, actions it has already taken and decisions it appears destined to make.

Such a study—with predefined outcomes—does not constitute the collaborative discussion required to achieve meaningful and lasting reform. Such a study is also, if nothing else, an indication that this legislation has been advanced in great haste.

Finally, the bill would impose inflexible caps on our regional hospitals. These caps might well force these important health care and economic resources to reduce services and eliminate jobs.

The bottom line is that the numerous technical deficiencies and conceptual flaws of H.524—including an effort to commandeer Executive Branch functions—render it incapable of achieving its publicly stated goals.

These principal deficiencies are enumerated in greater detail below.

### **I. H.524 Would Create a Government-Run Program that Limits Health Care Choices**

H.524 proposes to create a new government-run program to provide taxpayer financed health care coverage to Vermonters. As a first step this program would begin in July 2006 by offering a "bare bones" policy of primary and preventive care for all

currently uninsured Vermonters.

The bill's schedule makes clear, however, that the legislation is intended to offer primary and preventive care for all Vermonters by July 2007, hospital and primary and preventive care to all Vermonters by October 2008, and comprehensive benefits to all Vermonters by July 2009.

The result of the legislation would therefore be a system of insurance dominated by the government that competes with, and eventually eliminates, private health insurance options—an outcome with particularly negative consequences for the thousands of Vermonters currently covered by comprehensive private insurance plans.

## **II. H.524 Would Increase Premiums for Vermonters with Private Insurance and Hurt Providers**

During the three-year transition from the current coverage system to the full government-run program, Vermonters left in the private market will face higher and higher premiums as more and more costs are shifted from the Legislature's plan to individuals paying insurance premiums.

If, as expected, the government's provider payments are less than health insurance provider payments the difference will be cost-shifted to those Vermonters who pay premiums. Such an exacerbation of the cost shift is fundamentally unfair.

Notwithstanding the words in the legislation that promise not to exacerbate the cost shift by providing "reasonable payments to health care professionals," the history of the Medicaid and Medicare programs demonstrates that a public health care program always underpays health care professionals. Additionally, the word "reasonable" is not defined to guarantee reimbursements that would in fact approach market rates.

The notion that this proposal would reduce the cost shift related to uncompensated care is incorrect. Vermonters paying premiums will see no relief from the extra costs embedded in their premiums to pay for care for the uninsured. The Legislature's plan will not

offer hospital care until 2008 at the earliest, a date subject to available state revenues and contingent upon various conditions and benchmarks established in the bill.

As the Legislature's proposal expands, less competitive reimbursement rates will make the recruitment and retention of doctors and other health care professionals increasingly difficult. As a result, Vermonters will have fewer options when choosing a doctor or other provider, and greater limitations on treatment and benefits. Sacrificing access to quality care is not an effective or desirable way to reduce costs.

In the end, this proposal would worsen the cost shift, increase costs for Vermonters who are currently insured, and reduce treatment options for Vermonters. Such results are counter to my goal of lowering costs and increasing access, and therefore unacceptable.

### **III. H.524 Leads to Health Care Rationing**

Concentrated power in a dominant government program, combined with the financial pressures to meet the annual costs of coverage, will result in government rationing of health care under this proposal.

While there is some measure of truth in the assertion that all health care coverage systems contain some degree of "rationing" because no system can afford to provide unlimited health care benefits, a system where all participants (including patients, providers, and payers) face constraints and must be accountable to other participants, is far more likely to be responsive than a single government agency with near absolute power constrained only by the General Assembly.

Presumably, the reason for the minimal coverage offered at the outset is because that is all the General Assembly believes it can afford to offer, given the program's dependence on public financing. However, offering a minimal preventive plan has a limited cost containment benefit considering the fact that a majority of health insurance spending is for specialty care and hospital claims.

Nevertheless, similar decisions and trade-offs regarding the scope of benefits can be expected in the future as the program is forced to reduce benefits and treatment choices to fit expenditures within somewhat unpredictable annual state revenues.

#### **IV. H.524 Hurts Local Hospitals, Reduces the Quality of Care and Costs Regional Jobs**

One of the primary cost containment tools authorized by H.524 is an inflexible, annual cap on hospital budgets.

Based on the Legislature's formula, the cap could be as low as 3 percent in some years. This could result in salary freezes and layoffs, as well as the possibility of not allowing any medical technology purchases like new dialysis equipment or other advances that improve quality.

Expenditures, such as financing health care information technology systems that might very well save money, as well as improve quality in the long run, could be prohibited under the spending cap. This is deeply flawed public policy and counter to our efforts to enact reforms that lower costs and increase access.

Since the spending cap is also to be applied on a statewide basis, it will pit hospital against hospital, and region against region every year. It is possible that the largest hospitals would fare the best, winning a disproportionate percentage of the limited resources.

Ironically, the legislation seems to acknowledge some of the flaws identified above by offering the agency charged with administering and regulating the spending cap system the authority to adjust an individual hospital's spending cap based on "exceptional or unforeseen circumstances," and a further exception is made for "significant unbudgeted increase in volume." This sizeable loophole illustrates the failed reasoning behind arbitrary and inflexible caps.

Under the Legislature's proposal, residents of each region of the state would face the prospect of not knowing from year to year how the hospital they rely on will fare in its annual competition for

resources with other regions. If the spending cap is administered as strictly as it appears in the bill, it is likely that hospitals will be forced to dramatically reduce their services—forcing Vermonters to travel long distances for necessary treatment.

### **V. H.524 May Limit Where Residents Can Go for Care**

The legislation also proposes a “global hospital payment” and “organizational structures that integrate the delivery of care” on a regional basis.

A global payment would likely require a defined territory for each hospital. Carrying this to its logical conclusion, it would mean that a resident in one region would be required to go to the hospital serving that area, and to a physician practice also located there.

Vermonters want to be able to choose the hospital where their child is born, and where they see their doctor—unfortunately, H.524 fails to account for this.

### **VI. Ultimately, Cost Increases Would Render the Program Unsustainable**

It is highly unlikely that the proposed program could achieve any reasonable cost containment without jeopardizing the viability of community hospitals, lowering reimbursements to providers and forcing Vermonters into rationed care plans.

The burden on taxpayers of maintaining the program would as a result become unsustainable. Given the history of Vermont’s other public health care program, this scenario is very possible.

This year Vermont faced an \$80 million deficit in the Medicaid program. The structural problems in Medicaid have been apparent for many years, but the General Assembly has been reluctant to act until the problem reaches a crisis level.

Plainly put, it would be irresponsible to impose on Vermonters another government health care system with similarly unpredictable and unsustainable management and structural designs.

## **VII. Policies of the Past are not the Solutions of the Future**

For more than a decade, the Vermont Legislature enacted many health care mandates over the objection of state regulators and others who expressed concerns about the cost of health insurance.

Many of these decisions, as predicted by the same regulators, have resulted in fewer choices and higher health insurance costs—moving Vermont further from its goal of universal access to affordable health insurance coverage. In many ways, most notably in the intent to create a new government-run system, H.524 is a continuation of this failed public policy.

## **VIII. H.524 Imposes Punitive Payroll and Regressive Income Taxes**

The health care coverage proposed by H.524 is financed by punitive payroll taxes on small businesses and non-profit organizations, and a highly regressive income tax surcharge on individuals who presently cannot afford health insurance.

While the tax rates may seem relatively low at the outset, the legislation makes clear that it will quickly expand its scope and offer broader benefits to all Vermonters by 2009. The Legislature's proposal would, at a minimum, need new tax revenue sufficient to pay for the cost of their yet to be defined health care benefits in 2009.

The greatest burden imposed by the individual income tax surcharge will be on those uninsured Vermonters least able to afford the tax. While some may not be covered because they have not yet enrolled in Medicaid, most are not covered because they simply cannot afford it. It therefore follows that they cannot afford a tax increase.

Many of the uninsured also work for small businesses that cannot afford coverage. It makes little sense to increase taxes on these low and moderate income Vermonters, and offer in return an extremely limited policy that fails to offer some degree of protection from catastrophic health care expenses.

## **IX. H.524 Helps Wal-Mart Size Business and Hurts Small**

## **Homegrown Business**

Small businesses are a crucial economic engine for Vermont's economy. They will suffer if unreasonable taxation stifles growth in this sector. Furthermore, imposing a payroll tax on small employers with slim profit margins is likely to result in lower wages for low and moderate-income employees, further exposing the regressive nature of the proposed tax.

Contrary to the oft-stated view of some legislators that large, retail employers are the primary culprits for the plight of uninsured Vermonters, survey data show that small businesses with fewer than 25 employees constitute the bulk of firms which do not offer coverage to their employees.

Consequently, a payroll tax on small businesses that can least afford to offer coverage and least afford to pay the new taxes will very likely force many of them to eliminate jobs, lower wages, or leave Vermont altogether.

Larger firms, like Wal-Mart, if they are even subject to this tax, are far more capable of paying it. As small homegrown companies close, larger multi-state and multi-national corporations stand to benefit significantly from the increase in market share.

State government cannot be all things to all people and still sustain a vibrant economy that allows individuals and small businesses the freedom and flexibility to pursue their own non-governmental pursuits and create jobs.

## **X. H.524 Jeopardizes Other State Services**

The fiscal risks of the approach taken in H.524 for taxpayers and non-health care state programs alike are enormous. The Legislature's proposal would soon follow in the path of Medicaid and become the largest expense in the state budget, absorbing an ever-increasing share of tax revenues and denying resources to other priorities such as the environment, law enforcement and higher education programs, among others.

## **XI. H.524 Does Not Represent a True Consensus**

H. 524 demonstrates a disappointing disregard for the need to

collaborate and reach a broad non-partisan consensus.

This bill would have benefited from the expert opinion and point of view of individuals, employers, health care providers and Executive Branch personnel. Instead, the Legislature chose to ignore much of this counsel.

For example, H.524 includes a provision mandating hospitals to charge uninsured Vermonters, no matter how wealthy, no more than the average discount rate of payment received from health insurers and other third party payers. This provision was approved by the General Assembly despite the apparent absence of formal committee testimony and deliberation.

If testimony from hospitals and hospital regulators had been taken, the General Assembly would have learned that there might be more appropriate and effective ways to address what the legislators believe to be a problem.

## **XII. H.524 Ignores the Technical Concerns and Sets Unrealistic Expectations of Executive Branch Agencies and Departments**

Many other provisions of H.524 were approved by the General Assembly without serious consideration of the conceptual and technical concerns of the state agencies charged with implementing the bill.

For example, H.524 calls for the Office of Vermont Health Access (OVHA) to take the first steps needed to implement the new program in October 2005, to propose a budget for the plan in January 2006, to adopt payment methodology rules by February 2006, and to offer the benefit plan to uninsured Vermonters by July 2006.

The Tax Department is required by April 1, 2006 to create an entirely new tax system and program for the new payroll tax and the income tax surcharge, including the adoption of rules, the writing and printing of new and expanded forms, outreach and education to individuals and employers who would be paying the new tax, and actual collection of the new taxes.

H.524 calls for the Department of Banking, Insurance, Securities and Health Care Administration (BISHCA) to establish a new regulatory program to implement the hospital spending cap and global budget law, and to develop mechanisms to monitor whether employers are dropping coverage of employees because of the new government program.

Each of these agencies repeatedly expressed explicit concerns to the General Assembly that the time lines and expectations imposed by H.524 were unrealistic, and that the agencies charged with implementing the new programs had not been appropriated the resources needed to accomplish the intent of the legislation.

H.524 also includes an extraordinary grant of authority to the Legislative Commission on Health Care Reform. According to the bill, all Executive Branch agencies would be obligated to "report to the Commission at such times and with such information as the Commission determines is necessary to fulfill its oversight responsibilities." This constitutes unlimited power to demand whatever information, services and analysis the Commission wants from the Executive Branch, regardless of the cost or demands upon staff resources and implications for other essential programs.

These are not issues of health care policy debate, or matters of partisan dispute, yet the General Assembly refused to listen and ignored the facts, choosing instead to push ahead with great haste.

### **XIII. Provisions of H.524 Ignore the Traditional Separation of Powers**

The Vermont Constitution, Chapter II, Article 3, provides that the Governor and his or her Executive Branch agencies shall exercise the executive power of the State of Vermont. Portions of H.524 appear to cross the line separating the legitimate lawful role of the Legislative and Executive Branches of government.

One section of H.524 confers on the Legislative Commission on Health Care Reform the power to use \$20 million in taxpayer funds beginning in 2007 to issue requests for proposals, and to

administer grants for the development of “integrated systems of care” pilot projects. This section goes far beyond the traditional and appropriate role of the Legislative Branch.

H.524 also exhibits a desire by the General Assembly to discount the expertise of the Executive Branch in health care policy. The reform of Vermont’s health care system is too important to be left only to the Legislature. Real reform requires the collaboration of the Legislative and Executive Branches of government, employers, health care providers, and individual Vermonters who will be affected.

#### **XIV. H.524 Refuses to Recognize the Role of the Executive Branch in Reform**

H.524 creates the Legislative Commission on Health Care Reform and delegates to the Commission the critical functions of the Legislature’s plan, in particular a series of studies intended to justify decisions already made, actions they have already taken and decisions they intend to make.

The studies to be conducted by this Commission are crafted in a manner that would appear to have a preordained result—a new government-run, taxpayer financed health care rationing plan.

The economic impact study directs a comparison of their proposal with the effect of the current system, without including in the comparison more realistic and responsible reforms that have been proposed. Furthermore, it is irresponsible to hastily impose a new system of taxation without first studying its full economic impact.

The financing study is designed to focus on public, taxpayer financing as the preferred means of financing health care in Vermont and suggests a reluctance to consider alternatives.

In addition, the General Assembly had a choice of whether to include on the Commission members appointed by the Governor on an equal footing, and individuals from outside of government. The General Assembly chose to constitute the Commission with eight legislators.

The Executive will appoint two members, but these appointees are considered so insignificant that they are not given any authority to vote on the critical decisions of the Commission. No private individuals or health policy experts were included.

Broad representation and participation is not only fair, but also would have made the process of health care reform far more likely to succeed.

If the General Assembly seeks a health care reform outcome that will be successful, and that reflects a broad consensus among the many individuals and groups affected, it must include all interested parties in the dialogue.

Instead, the General Assembly has appropriated to itself \$775,000 to create a legislative bureaucracy and fund a public relations campaign promoting the preordained outcome of its studies.

#### **XV. H.524 Would Not Reduce Administrative Costs Because it Fails to Account for ERISA, Medicare & Medicaid**

In 2003, 27 percent of Vermonters were insured by ERISA plans that are exempt from state regulation, and 35 percent of Vermonters were insured by Medicare or Medicaid.

Even if the Legislature's plan offers a comprehensive benefit to all Vermonters by 2009, federal ERISA law still allows large employers to design and fund their own employee benefit plans, and Medicare and other federal coverage programs will still exist.

As a result, there is unlikely to be any reduction in administrative costs at the level anticipated by advocates of new or consolidated government health care programs; a multi-payer system will still exist. For the same reasons, it is likely that cost shifting to other Vermonters will continue to be a problem.

#### **XVI. H.524 Would Lead to Numerous Legal Challenges**

The sections of H.524 outlining the limited benefit regime provide that "an individual aggrieved by an adverse decision" has a legal right to appeal the decision to the Human Services Board.

While the section lacks a reasonable degree of specificity as to the standards and process for review, presumably this means that any beneficiary who wants a health care service, or services, not covered by the Legislature's plan may appeal the decision to the eight-member Board.

In addition, any hospital or specialist physician that believes they should be paid more than the Legislature's plan allows can seek higher compensation through the same process. Likewise, any pharmaceutical company that wants its drugs to be covered by their proposal will also have a legal right to seek a better deal.

Needless to say such a process could result in unnecessary and unreasonable increases in the programs expenditures, and substantially higher legal fees for the state—an observation that further exposes the unrealistic cost containment claims of this proposal.

## **XVII. Definitions of “Uninsured” and “Resident” are Too Vague**

In H.524 the definition of “uninsured” is very vague, and the definition of “Vermont resident” is very broad.

An uninsured Vermonter might include someone who decides to drop his or her existing coverage to join the artificially less expensive government plan. As a result, individuals with self-insured and private market plans will experience higher costs as Vermonters migrate to it. Unfortunately, as the limits of the government plan become apparent to those who switch, there will be fewer and fewer affordable options to return to—eventually the only option for those individuals may be the government's rationing program.

Also, if Vermonters insured in the private market decide to drop current coverage, or if businesses decide to drop coverage and pay the tax instead, or if residents from out of state decide to move to Vermont in order to receive expensive treatment not covered by insurance in their home state, there may be many more individuals enrolled in the program than estimated, and revenues may be inadequate to pay for their coverage without

raising tax rates.

### **XVIII. The Negotiated Payments Section is Flawed**

H.524 contemplates that payment amounts will be “negotiated” with hospitals and health care professionals. The section as approved by the General Assembly is an unclear and flawed concept.

What if OVHA and the hospitals, and health care professionals cannot reach an agreement? It does not appear that the legislation delegates to OVHA the authority, at the end of failed negotiations, to set a payment amount.

Does this mean OVHA is obligated to pay providers whatever they want? Or does it mean that OVHA will set a payment amount, but the hospital or health care professional is authorized to appeal the decision to the Human Services Board? Could a basis for appeal be that OVHA failed to adequately consider the “actual costs” of the hospital or health care professional?

If so, this provision has the potential to be the source of significant medical inflation.

### **XIX. The Payroll Tax is Open to an ERISA Challenge**

The payroll tax in H.524 is vulnerable to an ERISA challenge.

A plausible and persuasive claim can be made that because, as a practical matter, the tax will be imposed principally on businesses that do not offer health coverage, the tax is nothing less than a legal mandate to offer coverage, or to offer a higher level of coverage than the business would otherwise offer. ERISA prohibits states from requiring employers to offer health care coverage, or from requiring employers to offer a prescribed level of benefits.

### **XX. H.524 Payroll Tax Revenue Estimates are Incomplete**

The revenue estimate of the health care tax on employers (\$28.3 million in 2006) is a conservative approximation. The analysis is restricted only to private employers offering no health insurance, and should also include the application of the tax on entities that offer a low level of health insurance at a cost less than the 3

percent tax.

In addition, it is difficult to determine how many firms offering health insurance to their employees will be affected by the tax, and how much additional revenue will be collected. More time should be taken, and more in-depth analysis conducted, to evaluate the impact of the payroll tax on Vermont's small businesses and non-profits, and to develop a more accurate estimate of the revenue that will be raised from the tax.

### **XXI. H.524 Income Surcharge Tax Revenue is Likely Overstated**

The administration has found that assumptions of income growth in the uninsured population are too high and the assumed growth in the base due to increases in the uninsured pool is likely to be far too generous. Therefore, the revenue estimate of \$15.6 million from the income tax surcharge is very likely overstated.

By utilizing more conservative assumptions of income inflation (1 percent vs. 3.2 percent) and income growth resulting from increases in the number of uninsured (assuming only 80 percent of new uninsured have a positive Adjusted Gross Income), the revenue estimate could be overstated by as much as \$2 million.

As with the payroll tax calculations, and other areas of this bill, this legislation would have benefited from a more complete analysis of the income tax surcharge on the low and moderate income Vermonters who would be obligated to pay it. Likewise, the Legislature should have developed a more accurate estimate of the revenue that will be raised from the tax.

A key unresolved question for the income tax surcharge is how it addresses the many individuals who are not required to file income returns. H. 524 would impose a health care tax filing requirement on virtually every resident who is subject to income tax, regardless of whether they are required to file under the current tax code.

Many individuals who work may not have a current requirement to file. Many individuals who file are not required to file except to

obtain a withholding refund. Also, many people with low Adjusted Gross Income are required to file because of low thresholds for certain types of income. For example, married couples are usually not required to file if their gross income is less than \$15,900, but a couple with \$400 of self employment income is required to file, even if they have no other income. More thought should have been given to these, and other, implications—and the resulting complications—before moving forward with a regressive income tax surcharge on the working poor.

## **XXII. H.524 Calls for an Unrealistic Insurance Policing System**

H.524 directs BISHCA to “monitor whether persons who enroll in the Green Mountain Health insurance program were formerly covered by health insurance, and whether former insurance was self-paid or paid by an in-state or out-of-state employer.”

The legislation does not, however, indicate how this monitoring activity is to be accomplished, what resources are available to conduct such activity, or what authority has been conferred on BISHCA to carry out this task.

## **XXIII. H.524 Contains Many Other Poorly Designed Provisions**

The Pharmacy Cost Control section of the legislation, proposes a statewide preferred drug list (PDL) to include all Vermont health benefit plans. There is no certainty of any savings here, especially for the Medicaid program, because the number of Vermont-only lives will not generate the same rebates as the Medicaid pool that Vermont participates in that now includes ten states and 3.5 million lives.

In addition, Pharmacy Benefit Managers (PBMs) serving other Vermont insurers may not be able to duplicate rebates for all products in a single, Vermont PDL if they are not able to pool lives from other, out-of-state lines of business.

The legislation also proposes negotiating with manufacturers for lower prices including negotiating supplemental rebates. Approval of Vermont’s supplemental rebates by the federal Centers for

Medicare and Medicaid Services (CMS) prohibited using Medicaid to leverage rebates in any other program including publicly funded programs. CMS has since allowed that they will consider permitting the inclusion of publicly funded programs but there has been no response to the formal request, and approval is unlikely for coverage for state employees or coverage under other state programs.

The Pharmacy Benefit Management section of the bill is modeled after legislation enacted in Maine. The Maine law is the subject of a pending lawsuit claiming that the statute violates the federal ERISA law. Litigation in Vermont can therefore be anticipated.

PBMs have been very effective at consolidating consumer and payer bargaining power to achieve cost savings through negotiations with pharmaceutical manufacturers. While many individuals argue that PBMs have abused their market power, PBMs claim that directives such as the Maine law will cost consumers more. It would be more responsible to take the time needed to fully evaluate the impact of this section on Vermont's health care costs.

## **Conclusion**

We are indeed very fortunate to have a medical community that provides high quality care; and when we need them most, they are there for us. The doctors, nurses, nurse practitioners, aides, technicians, and the administrative staffs at our hospitals, practices and clinics are intelligent, competent, hardworking, and dedicated to providing the highest quality patient care possible.

Complementing our primary care system is a family of community health services, and pro bono services so that no one who needs immediate care is turned away for lack of insurance.

Vermont must, however, continue to confront a serious health care crisis. Health care costs are simply too high for many Vermonters. For working families and their employers, insurance premiums have skyrocketed while low cost options are being eliminated as insurance providers abandon Vermont's burdensome regulatory regime.

Patients are at risk of losing more direct control of their care and government is already failing to reimburse doctors and hospitals for the cost of treating the nearly one in four Vermonters covered by the state Medicaid program. As a result, those costs are shifted to the overwhelming majority of Vermonters who pay escalating private insurance premiums.

Vermont has the second most generous Medicaid program in the nation, and as a result we are headed for an unsustainable, multi-million deficit in the Health Access Trust Fund. This deficit represents a serious threat to the most vulnerable Vermonters who rely on this program and the taxpayers who fund it.

The worst thing we could do is rely entirely on expanded government programs for reform, a course that would cause Medicaid, and perhaps the health care system as a whole, to crumble under the burden of its own weight. Instead, we must save Medicaid in a responsible way and develop reforms that will lower costs, improve quality and achieve universal access to affordable health care coverage.

True reform must be comprehensive. We need to do more than just change the financing method. If costs continue to increase at the current rate, it won't matter what pocket the money comes from because they'll all be empty.

We need to tackle the root causes of rising health care costs, open our system up to low cost options, encourage healthy decisions and preventive care, and attack health concerns at their inception. And we need to maintain a patient-centered system that offers more individual choice and keeps health care decisions in the hands of patients and doctors, not government bureaucrats.

Working together, universal access to affordable health insurance is a goal we can achieve in our state, but H.524 moves Vermont in the wrong direction.

Therefore, based on my objections to H.524 as outlined above, and others, I am returning the bill unsigned to the House pursuant

to Chapter II, §11 of the Vermont Constitution.

Sincerely,

James H. Douglas  
Governor

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Sources: Governor's Office Press Release 6/22/05

# **Governor's Veto Sustained**

**H.524 2005**

The Governor's veto was sustained in The House :

**Yeas: 81      Nays: 63**

*(a two-thirds vote of 96 required)*

*Sources: Journal of the House, January 4, 2006.*