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## The Governor's Inappropriate Nominee

By: Charlie Arlinghaus

Gov. Maggie Hassan made a mistake by nominating someone engaged in an ongoing lawsuit against the state to regulate the area over which he's still suing. The mistake is not one of policy, but one of propriety. The nomination can and should be withdrawn before tomorrow's vote of the Executive Council.

Bill Duncan and I don't agree at all on education policy, but that does not and should not have any bearing on the propriety of his nomination to the State Board of Education. What's inappropriate is that he's currently engaged in suing the state in this very area — the area he's being tapped to oversee.

(continued on pg. 3)

## SB 369 - The House Vehicle Addressing the MET

Due to recent Superior Court rulings, which found the Medicaid Enhancement Tax unconstitutional, both the House and Senate have taken existing bills dealing the MET and amended them to contain modifications to the tax laws in order to address the rulings. The modifications have the possibility of making the hospital lawsuit moot, or satisfying the concerns of the hospitals such that the lawsuit is withdrawn, though neither result can be guaranteed.

On Thursday, the House Ways and Means committee approved an amendment to SB 369 that contained two proposals from the House. The majority of Ways & Means members acknowledge that this may not be the perfect solution, **but the legislative process is far from over.**

The House must pass something in order to have its position(s) be part of a committee of conference discussion. Subject matter not included in either the Senate or House bill cannot be introduced during the conference committee process. SB 369, as amended, contains two bipartisan proposals from members of the House Ways and Means and Finance committees that attempt to clarify existing laws and/or address the constitutional issue.

While we realize there are multiple ways to deal with the potential of loss of significant revenue, including budget cuts. However, it is possible that a Special Session over the summer would be required, and even then, we would not be guaranteed resolution. The House and Senate's proposals currently before us are our last best chance to resolve the issue this year.

(bill analysis continued on pg. 4)

### Important Dates & Events

<b>05/10/2014</b>	Candidate Training 10am New England College, Concord
<b>05/14/2014</b>	Republican Caucus – 9am LOB 305-307
<b>05/14/2014</b>	House Session – 10am
<b>05/15/2014</b>	Last Day to act on all remaining Senate Bills
<b>06/16/2014</b>	Committee to Elect House Republicans Golf Tournament

# Massachusetts Abandons Signature Health Exchange

Just a couple of weeks after it was reported that Oregon was abandoning its problem-riddled state exchange, earlier this week, [Massachusetts announced it is following suit](#). The overhaul the MA state exchange had to go through to make it compatible with Obamacare has raised many technological problems with the system.

Massachusetts recently announced that it is hiring a company that will build a new state exchange, due to go live for the next enrollment period that begins on November 15<sup>th</sup>. Because of the uncertainty that this state exchange overhaul will be completed by the time the enrollment period begins, MA will simultaneously be shifting citizens on to the federal exchange.

This is a significant blow to state exchanges since MA's exchange, which started in 2006, became the model for state exchanges nation-wide. Thousands of MA residents were placed on temporary Medicaid with the anticipation that they would be transitioned on to the state exchange, if they qualified. However, due to exchange failures, people have been unable to make the transition off temporary Medicaid, which was set to phase out by January and has now been extended through June, has ended up costing the state millions of dollars per month.

How much has this technological debacle cost Massachusetts taxpayers? The state had a \$69 million contract with CGI, the same company that was a major developer of the beleaguered federal insurance website and the same company that had an \$84 million contract to oversee the building of the Vermont exchange. The \$69 million price tag does not include the cost of fixes and workarounds associated with the poor performance.

This further shows NH made the right decision of not implementing its own state exchange

## House Session Action

Included below is a recap of the action taken on a number of Senate bills by the House on Wednesday:

**SB 366**, relative to video lottery and table gaming. Killed (173-172) Reconsideration failed: (172-192)

**SB 329**, relative to advertising alcoholic beverages on billboards. Killed (193-164)

**SB 370**, relative to reimbursement of towns affected by the Merrimack River flood control compact and making an appropriation therefor. Killed (284-62)

**SB 203**, relative to permissible uses of electronic benefit transfer (EBT) cards. Interim Study (188-161)

**SB 371**, requiring the establishment of a senior citizens bill of rights. Passed (241-106)

**SB 281**, relative to siting of wind turbines. Tabled (304-42)

**SB 241**, establishing the division of economic development fund. Passed (236-111)

## Senate Session Action

The Senate met on Thursday where they voted on a number of House bills. Below are a list of attention grabbing bills and their outcome.

**HB 1203**, repealing provisions relative to the sale of the former Laconia state school property. Passed (Voice Vote)

**HB 1229**, relative to the oil discharge and gasoline ether cleanup fund. Passed (Voice Vote)

**HB 1403**, establishing a state minimum hourly wage. Killed (13-11)

**HB 1494**, relative to administration of the New Hampshire retirement system and authority of the board of trustees. Passed (Voice Vote)

**HB 1581**, relative to the bonding of project costs for certain department of transportation bridge capital projects. Killed (13-11)

**HB 1624**, modernizing the juvenile justice system to ensure rehabilitation of juveniles and preservation of juvenile rights. Passed (Voice Vote)

**HB 474**, relative to eligibility for in-state tuition rates at the university system of New Hampshire. Interim Study (24-0)

# Arlinghaus: The Governor's Inappropriate Nominee

(continued from pg. 1)

After the state's school choice scholarship law passed in 2012, opponents filed a lawsuit to overturn it. That lawsuit known as *Duncan v. New Hampshire*, is ongoing. A recent headline missed this when it said that "State Board of Education nominee had sued state over education funding." The tense of that headline is wrong, and that distinction makes all the difference.

As the article makes clear, the lawsuit is ongoing. So the governor has nominated someone to the State Board of Education who is currently suing the state over education policy. He didn't once upon a time sue the state. He hasn't expressed concerns. He is currently engaged in a lawsuit — a lawsuit named after him — and the governor nominated him to oversee the area of state government that is entangled in his ONGOING lawsuit. Does the governor not see that this is a trifle odd?

As a matter of policy, we should not appoint plaintiffs of ongoing lawsuits to oversee the area of state policy over which they are suing. Ever. The governor could find plenty of liberals she could appoint to the board who don't happen to be currently suing the State of New Hampshire over education policy.

This problem can occur when you seek out activists for appointment to oversight positions. Previous governors have rarely sought activists for these oversight positions. Craig Benson, for example, selected a respected local businessman Fred Bramante to chair the board. John Lynch also avoided activists and those who had been lobbying the Legislature for his appointments. His selected chairman was another respected local businessman, Tom Raffio, who remains in that position.

Something Benson and Lynch — and their predecessors — agreed on: not one of them ever appointed someone suing the state over education to oversee education policy. Nor did they appoint anyone else enmeshed in an ongoing lawsuit to oversee the subject of that lawsuit. Tax lawyers suing the state weren't appointed to run Revenue Administration. Prison activists engaged in an ongoing lawsuit didn't take charge of Corrections.

No sensible person, looking at this outside of a political lens, could argue the merits of appointing ongoing plaintiffs.

Adding another wrinkle to this is one unique role of the State Board of Education. The board charters, authorizes and regulates almost every charter school in the state. Bill Duncan, aside from suing over an issue of educational choice, is regarded by the charter school community as leader of their opposition. He's on the other side in every debate. He has said "charter schools are a political statement, not an educational improvement." He's referred to charter schools as "dismantling public education" and called them a "distraction." Despite that, he says he supports charter schools. You can see, however, why the charter schools of the state might be skeptical.

These views of his — and by extension the governor who nominated him — are a policy choice. They are free to make that policy choice (with which I obviously disagree). But should someone with such demonstrated hostility to charter schools be placed on their oversight and authorizing board?

That's a policy choice the governor is free to make. His hostility to such schools makes his selection slightly disingenuous on the part of a governor who claims to be supportive of charters. But it is not disqualifying in itself. I expect that any fully qualified nominee she picks will have equally doctrinaire liberal views on the matter.

I don't want to lose sight of what is disqualifying. I said this before, but is worth repeating: As a matter of policy, we should not appoint plaintiffs of ongoing lawsuits to oversee state policy over which they are suing. Ever.

*Note: On Thursday, the NH Executive Council voted 3-2 to confirm the nomination of Bill Duncan to the Board of Education. Against: Joe Kenney, Chris Sununu. For: Colin Van Ostern, Chris Pappas, Deb Pignatelli*

# SB 369 - The House Vehicle Addressing the MET

(continued from pg. 1)

## SB369 as amended

### Sections 1 – 12

**Summary: Retains MET. Clarifies legislative intent, clarifies definitions of services taxed, and earmarks MET revenue for uncompensated care.**

While the State and the Ways & Means committee fully believe that the current tax structure is constitutional and will be upheld by the Supreme Court, SB369, first, seeks to provide the Courts and the public with clarification of the legislative findings and intent that constitute the basis of the decision to tax the hospital inpatient and outpatient services, so as to provide for the consistent, equitable and rational taxation of revenue from these two separate and distinct classes of property as permitted under federal law.

These services are distinct in many important ways from other classes of health care services including the following: a) They are provided differently; b) The services are subject to a different reimbursement methodology by public payors and even private payors; c) The services are subject to different licensing requirements under state law; d) The services are subject to different payment certification requirements under state and federal law; e) The services are accredited differently for all purposes; f) Inpatient and outpatient hospital services are potentially eligible for reimbursement of uncompensated care, and g) Inpatient and outpatient services are separate permissible classes under the federal law which regulates state health programs.

Sections 1 – 12 of the bill basically retain the MET in its current form but add a critical “Declaration of [legislative] Intent.” Consistent with that legislative intent, the bill specifies that all funds raised by the MET are appropriated to the uncompensated care fund, and it repeals a provision in existing law which allows monies in the uncompensated care fund to lapse into the general fund at the end of each fiscal year. This portion of the bill is to take effect upon passage.

### Sections 13 – 18

**Summary: Applies the MET uniformly to all applicable medical services, not just those provided by hospitals. With the expansion of the base of the tax, the rate of the tax is lowered to make it revenue neutral. These sections become effective only if the MET, as modified by the first 12 sections of the bill, is still held to be unconstitutional.**

The second part of the amendment, as a contingency, contains an alternative approach set forth in sections 13 – 18 that automatically replaces the earlier approach. The latter approach, should it ever become effective, would expand the MET tax base to specifically include the four categories of outpatient health care services which the Superior Court decisions cited in finding the MET unconstitutional. It also exempts from that tax twelve categories of health care entities and activities; establishes a threshold of \$500,000 of net patient services revenue received for the four categories of services, which must be exceeded before the tax is imposed; and specifies that the net effect of these changes is to keep the MET revenue neutral. Revenue neutrality is assured by immediately dropping the MET from 5.5% to 5%, and by requiring DRA to calculate the appropriate tax rate for each subsequent year based upon the revenue received from the tax the previous fiscal year.

## House Session Preview

Here’s a look at what is coming up in House Session on Wednesday:

**SB207**, relative to paycheck equity

**SB 390**, prohibiting discrimination against employees who are victims of domestic violence and establishing a committee to study the protection of employees from domestic violence.

**SB 120**, relative to political contributions and expenditures and relative to reporting by political committees.

**SB 415**, transferring surplus revenues to the revenue stabilization reserve account.

**SB 319**, relative to access to reproductive health care facilities.

**SB 307**, establishing a committee to review Citizens United amendments to the United States Constitution.

**SB 369**, relative to the Medicaid Enhancement Tax.

## Note from the Republican Leader:

House Republicans,

These next couple weeks, we are going to be entering the Committee of Conference phase of the House session. When bills are amended by the Senate, the Chairmen of the policy committees will check with their committees and recommend that the House concur, non-concur, or non-concur and request a Committee of Conference.

The House and the Senate members of the committees of conference will meet jointly and vote separately while in the Committee of Conference. A unanimous vote of both the House and Senate members of the committee of conference is necessary for the report to be sent to both the House and Senate, and all reports must be signed by the conferees and in to Legislative Services by May 30<sup>th</sup>.

Please make note of any committees of conference you may be appointed to, and please contact our office if you have any questions.

*Gene G. Chandler*

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### The Committee to Elect House Republicans Golf Tournament

Monday, June 16th  
Wentworth by the Sea in Rye, NH.

Registration: 12pm  
Shot gun start: 1pm

\$150/person

Includes: greens fees, cart rental, reception to follow

Contests will include: longest drive, closest to the pin, most honest score, and hole in one prize

For more information, including sponsorship opportunities, please contact Gene Chandler or Katie Horgan at

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