Arkansas Democrat Gazette

Do not create exchanges, says Cato Institute Wait-and-see approach advocated

By: Sarah D. Wire – March 20, 2013

Give up any control of online health-insurance markets required by federal law and refuse to help the federal government build them, the Health Policy Studies director of a Washington, D.C., think tank told Arkansas lawmakers Tuesday.

Michael Cannon with the Cato Institute told members of the Senate Insurance and Commerce Committee on Tuesday that states should challenge implementation of the 2010 Patient Protection and Affordable Care Act, either through legislation or lawsuits. "Refusing to create an exchange is going to force Congress to reopen this law," Cannon said.

In January, Arkansas received the OK to partner with the federal government in running a health-insurance exchange.

Insurance exchanges are designed to be competitive marketplaces where mostly uninsured people can shop for coverage, either online or with the help of consumer guides.

States can choose to operate exchanges completely on their own, enter into a partnership or let the federal government operate the exchange on its own.

Gov. Mike Beebe initially pushed for a state-run exchange, but after resistance from Republican lawmakers, he ordered the state Insurance Department to apply for a partnership so Arkansas could have some say in how the exchange should be run.

Some members, including Committee Chairman Sen. Jason Rapert, R-Bigelow, have questioned whether the state should choose to create and control its own exchange after the U.S. Supreme Court's June decision to uphold the federal health-care law.

Under the federal Patient Protection and Affordable Care Act, companies with 50 employees or more face fines from the Internal Revenue Service ranging from $2,000 to $3,000 for most employees who gain coverage on the exchange either because their companies don't offer insurance or it's deemed too expensive by the law. Such employees would apply for a tax credit.

Cannon told lawmakers that his group's understanding of the law is that if a state doesn't create its own exchange, the federal government cannot assess the fines or award the tax credits.

"The law is actually very clear on this point," Cannon said. "It wasn't a glitch, Congress intended to do that. It was an incentive they created to encourage states to establish exchanges." He said Arkansas should wait to see whether a federal court finds that the

Internal Revenue Service cannot fine businesses for not offering insurance or people for not having insurance in states where the federal government runs the insurance markets.

Oklahoma challenged the federal government over the fines in January 2011. U.S. District Judge Ronald White has not ruled whether Oklahoma even has standing to bring the case.

Annabelle Imber Tuck, co-chairman of the Plan Management Committee which is helping set up the state's role in the exchange, said it's impossible to know how or when a court will rule. Tuck is a former state Supreme Court Justice.

She said the law isn't as clear about the tax subsidies and penalties as Cannon told lawmakers.

"This argument has been going on since last July between legal scholars. There is only one lawsuit on the table. How the court will rule is anyone's guess," she said. "So the question is, what do the people of the state of Arkansas do in the meanwhile?" Rapert said he doesn't know what Arkansas would gain from handing over all responsibility for the exchange to the federal government.

"At the end of the day, if no one stops the IRS from imposing the penalties, I don't know what we gained from just opposing. At the end of the day, if the federal government is still going to impose penalties regardless of whether or not it was in the [Affordable Care Act] or not, you still have the same effect," Rapert said. "His [Cannon's] comments were crafted in order to help bring about opening up the legislation again by Congress, which literally we have no power to do. Only Congress can decide they are going to do that."