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HEADLINE: STATES GEAR UP FOR FIGHT AGAINST HEALTH REFORM MANDATES

BODY:

Across the country, states with a libertarian bend -- some of which had been warming up to the more socially permissive Democratic Party in recent years -- are considering constitutional changes that would block key elements of the House and Senate health reform proposals, such as requirements that people have insurance and that businesses cover their employees or pay a tax. State efforts originally aimed at prohibiting local efforts to introduce single-payer systems have taken on anti-federal overtones now that the national debate over health reform is in full swing, with many aspects in the main House and Senate bills anathema to advocates of state sovereignty.

Arizona has to date gone the furthest, with state lawmakers on June 22 approving along party lines a bill to refer to the November 2010 ballot a proposed constitutional amendment that protects individuals, employers and health care providers from having to participate in any health care system. It also guarantees that individuals and businesses can offer -- and providers can accept -- direct payment for health care services without facing penalties or fines, language aimed at heading off a single-payer system.

Six more states have introduced legislation modeled after the Arizona effort, and several others are considering similar measures. If the constitutional amendment passes in any state, it is seen as likely to spark a historic legal showdown over states' rights -- with possible ramifications for the whole health care system. Opting out could also lead states to lose federal assistance such as subsidies for people to buy insurance in a national exchange.

"I certainly would expect it would go to the courts as a states' rights issue," says Bert Coleman, manager of the Arizona campaign.

Coleman adds that proponents of the efforts chose to go through the legislative route rather than a much slower citizen petition (as in 2008) process in order to be part of the ongoing discussion over health reform. "We wanted to be part of the debate now," Coleman tells Inside Health Policy. "Will it influence the debate? I certainly hope so."

Indeed, some political experts see the backlash against health reform as having the potential to cut short -- and even reverse -- Democrats' recent gains in more libertarian states. Political analyst John Samples of the CATO Institute sees similarities with the elections of presidents Jimmy Carter and Bill Clinton, whose centrist campaigns were followed by more liberal policies that turned some voters off.

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Samples said he expects a more centrist approach to health care -- without a public plan, for example -- to emerge following the August recess. Otherwise, he said, Democrats will have a tough time keeping on board those centrists who have already stuck their necks out on the stimulus and cap-and-trade. And those swing-state legislators who do vote for a liberal bill run a serious risk of defeat in 2010, Samples said, despite much of the local benefits of the stimulus calibrated to kick in shortly before the election.

"They could lose a lot of those seats (won over the past two elections cycles)," says Samples, "which they're intensely aware of after 1994," when health reform was defeated and Democrats lost 54 seats in the House.

Proponents say the Arizona measure, which was defeated by a little more than 8,000 votes in 2008 (0.4 percent of the turnout), is likely to pass next year after being reworded to alleviate the concerns of stakeholders who had been worried that it could affect the states' safety net health care system, workers' compensation rights and Medicare beneficiaries.

Arizona's Proposition 101 language from 2008 has served as the basis for legislative language drafted by the American Legislative Exchange Council (ALEC), an association of conservative state lawmakers that boasts about 1,800 members -- almost a third of all state lawmakers -- including 150 who handle health care policy exclusively. Since then, another six states -- Indiana, New Mexico, Minnesota, North Dakota, Wyoming and Florida -- have introduced similar language that would if approved put a constitutional amendment on the ballot. Three of those states -- Indiana, New Mexico and Florida -- came out for Barack Obama in the 2008 election after voting for George Bush the previous election.

On July 29, ALEC also sent a letter to Congress on behalf of all its members expressing the group's opposition to a public plan and a national health exchange, which are seen as trampling states' rights and leading Americans down the road to single-payer health care.

Others have shown interest in a constitutional amendment: Utah State Rep. Carl Wimmer said last Monday (Aug. 3) that he intends to introduce ALEC-style language in the 2010 Legislature, the Salt Lake Tribune reports. And Texas Gov. Rick Perry on July 23 told Dallas conservative talk radio WBAP's Mark Davis that he may consider invoking state rights protections under the 10th Amendment to resist President Obama's healthcare plan, the Fort Worth Star-Telegram reports.

Indeed, national health reform is seen by some as an ideal battleground for the fight over state sovereignty under the 10th Amendment, which grants to the states or to the people all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States." Mounting anger against an ever-expanding federal government -- fueled most recently by the stimulus, the rising deficit and gun control fears among many other issues -- has led at least three dozen states to consider or pass initiatives declaring their states' sovereignty under the 10th Amendment.

A number of state sovereignty advocates see national health reform as ripe for a nullification challenge from the states. Some see a model in states' uproar against Bush's Real ID Act of 2005 -- the law calls for creating federal standards for state drivers' licenses, among other provisions -- which led to that act being postponed until 2011, with its future in doubt.

"Even if the feds come out with a wonderful [health reform] plan that is market driven, if it's a federal mandate, I'm opposed," Wimmer, who recently started the Patrick Henry Caucus to promote state sovereignty, told the Salt Lake Tribune. "Basically they should keep their hands off -- it's not within their purview."

But others caution that viewing the opposition to aspects of health reform only through the prism of state sovereignty is too simplistic.

Christie Herrera, director of ALEC's health and human services task force, points out that the push-back that led to Arizona's Proposition 101 came about before President Obama's election and was originally aimed at countering a

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single-payer proposal in the Arizona legislature. An amendment by Rep. Dennis Kucinich (D-OH) enabling states that so desire to create single-payer healthcare systems -- by altering federal preemption over state efforts that impinge on employer-based health care plans -- passed the Education and Labor Committee on July 31 by a bipartisan 27-19 vote.

"Although the amendment does not create a single payer health care system," Kucinich said in a statement, "it removes a major obstacle for any state that wishes to pursue the single payer option."

At the same time, at least a dozen states have introduced proposals to create single-payer systems, with six of them -- Pennsylvania, California, Illinois, Ohio, Colorado and Massachusetts -- seen as having a chance of passing.

"The constitution exists to secure individual rights," Herrera tells Inside Health Policy. "State legislatures can also run amok, and so it's important to secure individual rights whatever policy area it is." -- Julian Pecquet

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