



Goldwater Institute believes insurance exchange violates state's Health Freedom Act

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A free market public policy research organization is telling Idaho lawmakers that a state insurance exchange would violate Idaho's Health Freedom Act (IHFA), which declares that Idahoans can't be compelled to purchase insurance or face a penalty for their refusal to do so.

The Arizona-based Goldwater Institute wrote lawmakers Wednesday, offering a different take on the issue than that of Idaho Attorney General Lawrence Wasden, who concluded that the Health Freedom Act, signed by Gov. Butch Otter in 2010, does not conflict with the Otter's proposed insurance exchange.

Christina Sandefur, an attorney with Goldwater's Scharf-Norton Center for Constitutional Litigation, wrote that states that have passed legislation similar to Idaho can help block the insurance mandates and tax penalty provisions in the Patient Protection and Affordable Care Act (PPACA).

"State exchanges that conform to PPACA are inconsistent with this safeguard because they are the key vehicles for implementing the individual mandate tax. States that create exchanges are required to hand over to the federal government names and other sensitive information about citizens and their health care choices and must play key roles in enforcing the penalty on those who do not purchase the requisite insurance," Sandefur said. "A majority of states have already declined to establish state-funded exchanges, including fifteen Health Care Freedom Act states. Idaho is in a position to stand up against federal overreach by refusing to become Washington, D.C.'s agent in implementing PPACA. I hope you will continue to respect Idaho's commitment to protecting the health care freedom of its citizens by rejecting a state exchange."

Idaho's Wasden and his office reached a different conclusion. In a letter opining on whether the Health Freedom Act would have to be repealed in order to accommodate the state insurance exchange, deputy attorney general Brian Kane wrote that the answer is "likely no."

"Health exchanges merely establish a mechanism for health insurance plans to be marketed. Whether the 'individual mandate,' which is the apparent object of the IHF A, embodies sound public policy is a separate issue," Kane wrote. "I also must emphasize that state officials and political subdivisions have no enforcement responsibilities with respect to the individual mandate." That responsibility rests with the Internal Revenue Service, Kane said.

Critics, however, side with Goldwater on the matter. Michael Cannon, of the Cato Institute, said Wednesday that there's more to a state insurance exchange than merely marketing health insurance plans.

“Exchanges are new government bureaucracies that enforce ObamaCare’s many regulations, channel billions in deficit-financed government subsidies to private health insurance companies, and help the IRS penalize individuals and employers who fail to purchase government-approved insurance,” Cannon wrote. “So far, some 32 states have refused to establish an Exchange themselves. If Idaho’s legislature authorizes an Exchange, they will make Idaho the only state where a Republican legislature and governor acted together to implement this essential piece of ObamaCare.”