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ObamaCare: Cuomo, Christie & you

By: MICHAEL TANNER - December 13, 2012

New York Gov. Andrew Cuomo and New Jersey Gov. Chris Christie have taken their states in opposite directions when it comes to implementing the Patient Protection and Affordable Care Act, a k a ObamaCare.

Last week, Christie vetoed a measure to have New Jersey set up a state health-insurance exchange, joining 21 other governors in rejecting the idea. Cuomo earlier used an executive order to move ahead with establishing an exchange in New York, despite the Legislature's refusal to pass a law doing so. New Jersey taxpayers, businesses and consumers are likely to get the better end of the deal.

An exchange is a new bureaucracy that theoretically will make it easier for consumers to shop for insurance. Health plans for individuals and small groups (not, initially, for large employers) will be grouped together in four categories of nearly identical plans — bronze, silver, gold and platinum.

The difference, even between a bronze or platinum plan, is mostly a matter of copayments, premiums and deductibles rather than benefits. This could make it easier for consumers to compare plans — but will also likely limit the options available and therefore restrict consumer choice. The ObamaCare calls for every state to have an exchange running by Jan. 1, 2014.

We don't yet know what rules these exchanges will operate under, so we can't know what insurance plans will eventually be sold there. But chances are good that you might not be able to find the combination of benefits, deductibles and so on that best meets your needs.

The exchanges also provide a mechanism through which Washington can funnel subsidies. That is, individuals who buy insurance through an exchange may be eligible for subsidies designed to reduce the cost of that insurance.

No one will *have* to purchase a policy through an exchange — but subsidies are only available for insurance bought through one, so the non-exchange insurance market may find it difficult to survive. Plus, many businesses may find it advantageous to stop offering the health insurance that they now provide, leaving their employees with no choice but to buy on the exchange.

The experience of exchanges already operating in Massachusetts and Utah suggests that, in practice, they'll be fraught with problems, including high premiums and an unwillingness of insurers to participate. They'll also face "adverse selection" issues: An exchange tends to attract the sickest and most costly patients, driving up premiums and leaving people trying to get insurance through it facing high costs and problems getting care.

Cuomo and Christie took the steps they did because, while ObamaCare requires every state to *have* an exchange, it doesn't force a state to set up or operate it. If a state fails to establish one (as in Jersey), the federal government will step in and set up the exchange itself.

At least, it's *supposed* to step in. Whether the feds actually *can* set up exchanges in more than 20 states is an open question. Certainly, Congress seems unlikely to appropriate money for them to do so.

In some ways, there's not much difference between a federal and a state exchange. The law authorizes the feds to "ensure that states with exchanges are enforcing federal standards." In other words, each state is free to set up an exchange, as long as it does so exactly as the federal government wants it to. In fact, in establishing its exchange, New York may find that it has actually outsourced control over state insurance laws to the feds.

By setting up its exchange, New York also wins the dubious privilege of paying the full cost for operating it. If the feds set up an exchange in New Jersey, they'll have to pay for it. Thus, Cuomo has imposed about $100 million a year in costs on New York taxpayers. Christie, by contrast, may well have saved Jersey taxpayers from that burden.

And, by rejecting a state-run exchange, Christie has potentially freed New Jersey businesses from ObamaCare's mandate that all employers with 50 or more workers provide health insurance or pay a tax of $2,000 per worker.

Potentially, because that mandate only kicks in if at least one employee qualifies for subsidies under the exchange — and, under explicit language of the ObamaCare law, subsidies aren't available through a federally run exchange.

The Obama administration has claimed the authority to unilaterally rewrite the law in order to offer subsidies through a federal exchange. The issue is surely headed to the Supreme Court; it's anyone's guess how the justices will rule. But if the courts uphold the plain language of the statute, New Jersey and other "refusenik" states will find themselves at a significant competitive advantage when it comes to attracting businesses.

Come 2016, Cuomo and Christie may well face off in a race for the presidency. For now, their contrasting approaches to ObamaCare are a pretty clear indication of that debate.