

Legal experts argue health-care overhaul
By Tracie Dungan

FAYETTEVILLE --

Two legal experts debated Tuesday whether a sweeping federal health-care overhaul enacted in March 2010 is an issue for the federal government or for individual states.

The panel of two at the University of Arkansas took turns at the podium arguing before at least 125 law students the pros and cons of the universal health-care legislation, the provisions of which began kicking in gradually last year and will continue annually through 2018.

Each agreed their areas of legal expertise differ.

"I'm a constitutional lawyer," said panelist Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute in Washington, a public policy think tank dedicated to principles that include individual liberty and limited government.

Likewise, Rob Leflar approached the topic from his perspective on health law and policy, which is an area of his expertise in his job as the Arkansas Bar Foundation professor of law at UA's School of Law in Fayetteville, which was the host of Tuesday's debate.

"We have a perverted system," Shapiro said, referring to the World War II-era emergence of employer sponsored health insurance benefits that set the United States apart from other developed nations.

He rejected proponents' comparisons of health-care legislation's attempts to require that all Americans be covered with other kinds of legally required insurance coverage.

"States requiring people to buy auto insurance because they choose to drive is very different than requiring people to buy health insurance because they're alive," Shapiro said.

"Never before has the federal government required people to buy something - it's unprecedented," Shapiro said.

Leflar contended the law's "individual mandate" provision is a misnomer, since, as he put it, Americans will in fact have a choice.

"You can choose whether to 'play' or 'pay,'" he said.

The provision requires U.S. citizens and legal residents to have qualifying health coverage beginning in 2014, according to a summary by the Kaiser Family Foundation, a

private, nonprofit health-policy group that touts itself as a non-partisan source of facts and analysis.

Those without coverage will pay a tax penalty of the greater of \$695 per year up to a maximum of three times that amount, or \$2,085 per family; or 2.5 percent of household income. The penalty will be phased in as follows:

For the flat fee - \$95 in 2014, \$325 in 2015 and \$695 in 2016.

As a percentage of taxable income - 1 percent in 2014, 2 percent in 2015 and 2.5 percent in 2016.

Beginning after 2016, the penalty will be increased annually by the cost-of-living adjustment, according to the foundation.

“It comes down to personal responsibility,” Leflar said, adding that those who shrug off this duty will argue they can always continue going to the emergency room when they can’t pay for care.

“Well, that is true - thanks to the federal anti-dumping law,” Leflar said.

He was referring to a federal law that prohibits hospital emergency rooms from turning away patients.

Under the Emergency Medical Treatment and Active Labor Act of 1986, hospitals must treat everyone who comes through an emergency room door, offering an “appropriate” medical screening examination as well as stabilization of all medical conditions.

But Leflar argued that such care is more expensive than primary care and is good neither for the patient nor for the rest of the country, which ends up paying for it in higher taxes and health-insurance premiums.

The “free-loaders” who choose to go without coverage despite the new law will end up suffering, Leflar said, because that cancer or other severe illness that lands them in the ER could have been prevented in the first place through preventive, primary care.

Leflar also spoke of the concept of “generational equity” - that young Americans should invest in a healthcare system they likely will depend on in old age, if not sooner.

“You’ve got to involve all the young, relatively healthy people who think they’re never going to be injured in a car crash,” he said.

Shapiro responded that studies show diet and exercise have a greater impact on health than being insured.

So, he asked, should the government force people to join health clubs or “shove broccoli down one’s throat?”

Arkansas’ surgeon general, Dr. Joe Thompson, has put the number of uninsured state residents at roughly 500,000.

Thompson also has estimated the federal health-care legislation will shrink these uninsured numbers by up to 80 percent in 2014, a year that will bring 20 major changes including expanded Medicaid coverage and presumptive eligibility for Medicaid.

Leflar said Americans elected President Barack Obama and Congress with the understanding they’d “get health-care reform passed.”

And, he said Article 1, Section 8 of the U.S. Constitution gives Congress the power to levy and collect taxes to provide for the general welfare of the United States, and to regulate commerce. People who forgo insurance are making economic decisions that have consequences for the economy, Leflar said.

“This is a critical national problem, and not one states can handle themselves - particularly a state like Arkansas,” Leflar said, adding that it doesn’t have the resources of many other states.

But Shapiro said a majority of states are suing over “Obamacare” and that it should be their issue.

“Congress can’t create its own necessity,” Shapiro said. “It can’t rub Aladdin’s lamp.”