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Oklahoma a model for 'Obamacare' opponents for challenging health-care overhaul

By Wayne Greene March 23, 2013

Read the Tulsa World continuing coverage of the health care law.

Three years after President Barack Obama signed the Affordable Care Act, it remains controversial - with one side urging states to follow Oklahoma's example in fighting the law and the other arguing that the state will deprive thousands of people of health coverage if it doesn't embrace the opportunity.

Elements of it - including greater insurance access for people with pre-existing conditions and elimination of lifetime limits on essential benefits - have taken effect, but the heart of "Obamacare" doesn't take effect until Jan. 1.

That is the effective day for requirements that almost all American citizens have qualifying coverage and that large employers provide insurance to their workers or face stiff tax penalties.

It is also when large-scale federally funded Medicaid expansion will begin in states that accept the program and when health insurance exchanges - electronic marketplaces for consumers to shop for insurance and buy it with federal subsidies - open.

Gov. Mary Fallin and legislative leaders have made it clear that Oklahoma won't accept the Medicaid funding and won't build its own exchange, a key element in Attorney General Scott Pruitt's federal court challenge to the legality of rules to enforce the law's employer mandate.

"50 Vetoes: How States Can Stop the Obama Health Care Law," a report issued by the Cato Institute this week, urges other states to follow Oklahoma's path and refuse to build exchanges and use that as a way of challenging the law.

Thirty-three other states have also said they aren't building their own exchanges, according to the Cato Institute, but Oklahoma's legal challenge is unique.

In court filings, Pruitt has argued that the Affordable Care Act allows the federal subsidies to be paid only through exchanges built by states and that the law says tax penalties against employers who don't offer insurance can be levied only if the subsidies are paid.

If Oklahoma doesn't build an exchange, neither the subsidies nor the penalties can come to the state, Pruitt argues.

Attorneys for the U.S. Department of Health and Human Services have replied that a planned federally built exchange for the state is the same as a state exchange under the law.

Exercising vetoes

The case remains unresolved in U.S. District Judge Ronald White's Muskogee-based court, but the Cato Institute report holds up the Oklahoma argument as a model.

"Employers, consumers and even state officials in those 34 states (including Oklahoma) can challenge those illegal taxes in court, as Oklahoma has done," says the report, written by Michael Cannon, director of health policy at the Cato Institute.

Some 167,876 poor and middle-class Oklahomans will be exempt from the law's individual mandate if the state doesn't build an exchange, the report says.

Rejection of the law's Medicaid-expansion provisions - another choice taken by Oklahoma leaders - is also a key element in forcing the repeal of Obamacare, the report says.

"A critical mass of states exercising their vetoes over exchanges and the Medicaid expansion can force Congress to reconsider, and hopefully repeal, the rest of this counterproductive law," the report said. "Real health-care reform is impossible until that happens."

A separate report, released Friday by the Urban Institute, says refusing Medicaid expansion will deprive health coverage to thousands of Oklahomans and cut millions of dollars in needed revenue from hospitals in the state.

Under the federal law, anyone from a household earning less than 133 percent of the federal poverty level - currently, $31,322 for a family of four - would be eligible for Medicaid coverage. Currently in Oklahoma, only people in specific groups - the elderly, blind, disabled, children and pregnant women - are eligible for Medicaid services.

Even if Oklahoma doesn't accept Medicaid expansion, the Affordable Care Act will reduce the number of uninsured Oklahomans, the report finds.

Without the Affordable Care Act, there would be an estimated 647,000 uninsured Oklahomans in 2022. With the law and no Medicaid expansion, that number would go down by 226,000. But with the Medicaid expansion, the number would go down by an additional 126,000 people, the report predicts.

Financial pains

The net effect of refusing the Medicaid expansion will be expensive to hospitals, the report says.

The federal law reduces "Disproportionate Share Hospitals" payments and some other federal hospital funding, but it also means some people who otherwise would have had private insurance will be eligible for Medicaid, which pays less.

"Altogether, for each dollar in private revenue that a Medicaid expansion eliminates, Medicaid revenue rises by $2.59" with expansion, the report finds.

In Oklahoma, the report estimates, hospitals would receive $4.1 billion more between 2013 and 2022 if the state accepts the Medicaid expansion.

"Put simply, hospitals' financial pain from the (Affordable Care Act) remains mandatory," the report concludes. "The extent of their offsetting gains now depends significantly on whether state leaders decide to expand Medicaid."

Under the law, the federal government would pay 100 percent of the cost of new benefits for the first three years of Medicaid expansion. After that, a share of the costs would be shifted to the states, with the state's share capping at 10 percent in 2022.

Fallin has argued that the state can't rely on the federal reimbursement promises and can't afford the potential costs of the state's share of additional benefits and increased administrative costs.