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## Law stands: Now what?

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Texans may soon be buying health insurance the way they buy electricity - in a marketplace where consumers can shop for policies with the same "apples to apples" comparisons they use to weigh electricity rates.

Last week's Supreme Court decision upholding President Barack Obama's health care overhaul clears the way for such markets in all 50 states, despite opposition from Gov. Rick Perry and other Republican governors who were hoping the law would be dumped by the court.

Texas Republican Rep. John Zerwas, an anesthesiologist from Simonton, last year wrote a bill to create a Texas insurance exchange. The bill called the health care overhaul "unconstitutional," but it died in the face of a Perry veto threat.

Perry vowed that Texas would do nothing to lend credence to the health care law until the Supreme Court weighed in. In 2010, the Texas Department of Insurance got a \$1 million grant from the federal government to study insurance exchanges. But last year the department returned more than \$900,000 of that amount.

Zerwas said Perry assured him the state could create an exchange without needing action by the Legislature, which does not meet until 2013. Deputy press secretary Lucy Nashed said Friday that Perry hasn't decided whether to do that.

A federal exchange would put Texans at a disadvantage, Zerwas said, because it could mean a "one-size-fits-all approach."

"I've always looked at it kind of like the way we deregulated electricity," Zerwas said. "All of a sudden people had to buy something they really hadn't thought about for two seconds."

"An insurance exchange would be serving the same kind of purpose out there," he said. "It's a place people could go to better educate themselves, get a comfort level with the costs and so forth. I see that happening whether you have government health care reform or not."

Waiting on repeal

By Nov. 16, the state is supposed to declare whether it intends to create its own exchange or leave it to the federal government to create one. If Mitt Romney wins

the election that month and can get Republican majorities in both houses of Congress, the prospect of a federally administered insurance exchange for Texans may disappear through repeal of the law.

But there's not much time left if Texas wants to design its own exchange rather than accept the Obama administration's approach. And that worries insurers, benefit analysts and even some conservative health economists.

"It's very political," said Devon Herrick, a health economist with the Dallas-based National Center for Policy Analysis. "We've always maintained it's probably better for a state to go ahead and set up an exchange. That way a state could have more bargaining power to maybe extract better services from [the federal government]."

"The administration wants this to work; they're desperate to have the Affordable Care Act work. ... This way, a state can tailor their own exchanges to meet their own needs," Herrick said. "Not all free market analysts think that way."

Indeed. Under an argument popularized by two Forbes magazine columnists and the conservative **Cato Institute**, states opposed to the law shouldn't lift a finger.

Companies with more than 50 workers are required under the law to provide health insurance to their employees. If they don't, and their workers seek subsidies in an exchange, the company has to pay a fine of \$2,000.

The way the law was written, subsidies are provided for individuals shopping in a state-created insurance exchange, but there are questions about whether they are provided in a federally administered exchange.

"It's just a mistake in the law," said John McCracken, health management professor at the University of Texas at Dallas. "The way the law was drafted, an employer only pays a penalty if one of the employees receives a subsidy on an exchange. Because no subsidies are offered in federal exchanges, in Texas, there is effectively no employer mandate. They won't be penalized for not offering health insurance."

Federal officials say that's just not so. Asked point blank if the law provides subsidies on federal exchanges, U.S. Health and Human Services' insurance oversight director Mike Hash said, "Yes, it does."

The doubt lingers.

"It's a nuance in the law that I think needs to be answered, frankly," Zerwas said. "I don't know if it would drive Texas one way or the other, but it needs to be clarified."

Who would shop?

Under Obama's health care overhaul, each state would have an insurance exchange for individuals by 2014. (The law also creates separate exchanges for small businesses.) Most Texans could expect to continue to get their health care at work as an employee benefit. The individual exchange would offer markets to people between jobs, people who can't get insurance because of their health or who work for firms that don't offer comprehensive insurance.

Families making less than \$88,000 a year would qualify for federal subsidies. The law limits the amount a family would be expected to spend at 9.5 percent of income; the amount drops to 3 percent for individuals making about \$15,350.

Two years ago, the state's Health and Human Services Commission told the Legislature that as many as 43 percent of an estimated 6.5 million uninsured Texans could

qualify for subsidies under Obama's individual insurance exchange.

The Affordable Care Act creates separate Small Employer Health Insurance Plan exchanges where small businesses can go for employee health insurance.

Ceci Connolly, managing director of the Health Research Institute of PwC (PricewaterhouseCoopers), said many small firms are very interested in the exchange.

"They're probably the most viable option for them to offer affordable, comprehensive insurance for their workers - something that has been exceedingly difficult for some time," she said.

Connolly said PwC expects health insurance exchanges will grow into a \$200 billion market by 2020.

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