

States Seeking To Ban Mandatory Health Insurance

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HEADLINE: States seeking to ban mandatory health insurance

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Although President Barack Obama's push for a health care overhaul has stalled, conservative lawmakers in about half the states are forging ahead with constitutional amendments to ban government health insurance mandates.

The proposals would assert a state-based right for people to pay medical bills from their own pocketbooks and prohibit penalties against those who refuse to carry health insurance.

In many states, the proposals began as a backlash to Democratic health care plans pending in Congress. But instead of backing away after a Massachusetts election gave Senate Republicans the filibuster power to halt the health care legislation, many state lawmakers are ramping up their efforts with a new enthusiasm.

The moves reflect the continued political potency of the issue for conservatives, who have used it extensively for fundraising and attracting new supporters. The legal impact of any state measures may be questionable because courts generally have held that federal laws trump those in states.

Lawmakers in 34 states now have filed or proposed amendments to their state constitutions or statutes rejecting health insurance mandates, according to the American Legislative Exchange Council, a nonprofit group that promotes limited government that is helping coordinate the efforts. Many of those proposals are targeted for the November ballot, assuring that health care remains a hot topic as hundreds of federal and state lawmakers face reelection.

Legislative committees in Idaho and Virginia endorsed their measures this past week. Supporters held a rally at the Pennsylvania Capitol. And hearings on the proposed constitutional amendments were held in Georgia and Missouri. The Missouri hearing drew overflow crowds the day after Obama urged federal lawmakers during his State of the Union address to keep pressing to pass a health care bill. The Nebraska Legislature plans a hearing on a measure this coming week.

The legal effect of any state measures may be questionable, because courts generally have held that federal laws trump those in states.

Yet supporters of the state measures portray them as a way of defending individual rights and state sovereignty, asserting that the federal government has no authority to tell states and their citizens to buy health insurance.

"I think the alarm bell has been rung," said Clint Bolick, the constitutional litigation director at the

Goldwater Institute in Phoenix, which helped craft an Arizona amendment on this November's ballot that has been used as a model in other states.

"These amendments are a way to manifest grassroots opposition" to federal health insurance mandates, Bolick said. "They kind of have a life of their own at this point. So while some of the pressure may be off, I think that this movement has legs."

Separate bills passed by the U.S. House and Senate would impose a penalty on people who don't have health insurance except in cases of financial hardship. Subsidies would be provided to low-income and middle-income households. The intent of the mandate is to expand the pool of people who are insured and paying premiums and thus offset the increased costs of insuring those with preexisting conditions or other risks.

The federal bills also would require many businesses to pay a penalty if they fail to provide employees health insurance that meets certain standards, though details and exemptions vary between the House and Senate versions.

Obama and Democratic legislative leaders were working to merge the two bills when Republican Scott Brown won the Massachusetts Senate seat long held by the late Edward M. Kennedy on Jan. 19, leaving Democrats one seat shy of the number needed to break a Republican filibuster.

Since then, the federal legislation has been in limbo. But state lawmakers have not.

"We need to move ahead no matter what kind of maneuvering continues in Washington, D.C.," said Missouri Sen. Jane Cunningham, a Republican from suburban St. Louis.

Since suffering resounding defeats in the 2008 elections, Republicans have seized upon voter unease over the federal health care legislation to help revitalize their fortunes.

A USA Today/Gallup poll conducted the day after the Massachusetts vote found that about 55 percent of respondents including a majority of self-described independents favored putting the breaks on the current health care legislation. The poll had a margin of error of plus or minus 4 percentage points.

State laws or constitutional amendments clearly could bar lawmakers in those states from requiring individuals to purchase health insurance, such as Massachusetts has done. But it's questionable that such the measures could shield state residents from a federal health insurance requirement.

"They are merely symbolic gestures," said Michael Dorf, a constitutional law professor at Cornell University. "If this Congress were to pass an individual mandate, and if it is constitutional which I believe it is the express rule under the supremacy clause (of the U.S. Constitution) is that the federal law prevails."

Many Democratic lawmakers are skeptical of both the intent and the effect of the state measures, entitled in many states as the "Freedom of Choice in Health Care Act." Some have derided it as "political theater" or an attempt to merely shape the public debate.

"We need to do something about health care," said Idaho Rep. Phylis(cq)King, a Boise Democrat. "And the federal government is trying to do something. It hurts our companies and it hurts our people to be uninsured."

Associated Press writer John Miller contributed to this report from Boise, Idaho.

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