

Los Angeles Times

Officials ponder how to ensure healthcare reform in California

As the U.S. Supreme Court considers the fate of the federal Affordable Care Act, legislation in California could pave the way for a state substitute, if needed.

By Chad Terhune, Los Angeles Times

April 1, 2012 9:42 p.m.

As doubts grow about the survival of the federal healthcare law, state officials are considering ways to keep key elements of the legislation alive in California.

Skepticism of the Affordable Care Act by conservative Supreme Court justices during oral arguments last week has raised the possibility the court will strike the individual mandate to purchase health coverage or throw out the entire law as unconstitutional.

Even if the whole law is scrapped nationally, many of its consumer protections, such as guaranteed coverage for children, are expected to survive in California. But a massive expansion of coverage for the poor and the uninsured would be doubtful without tens of billions of dollars in federal aid.

There's already legislation pending in Sacramento to further implement the federal overhaul, and those proposals could become the vehicle for a state substitute. Crucial to that effort, supporters say, would be ensuring all Californians purchase health coverage in order to spread the risk and lower costs for everyone.

"I would work with other state leaders to make sure California continues to move ahead," said Dave Jones, state insurance commissioner. "We require everyone to have auto insurance in California, and the world hasn't stopped spinning on its axis. All this political tumult generated by the far right is really ignoring the reality in California and elsewhere."

Assemblyman William Monning (D-Carmel), who is chairman of the state Assembly Health Committee, said he would support a measure mandating Californians buy coverage if federal funding is still available to assist consumers.

But Monning said such a measure probably would take a two-thirds majority vote in the Assembly and Senate because such a state requirement to buy coverage could be considered a tax and require a super-majority. "It could be an uphill fight to get the political support to do that," he said.

California went down this route before, nearly approving an individual mandate in 2008 as part of reform under then-Gov. Arnold Schwarzenegger.

Some health-policy experts said California could pursue other options to encourage healthy consumers to join the insurance pool and to help offset the medical costs of sicker policyholders. The state could impose an open enrollment period similar to what employers use and have penalties for people who try to sign up at a later time.

California insurers are preparing to fight any efforts to force them to accept sick applicants without some requirement that healthy Californians enter the market as well.

Without that, the industry warns that premiums will rise substantially and even more people will drop coverage. The state has nearly 7 million uninsured, or about 21% of the population, according to the California HealthCare Foundation.

"California would need to look at the pillars upon which the entire Affordable Care Act is based and make sure there is not a problem that comes from pulling out one pillar of the structure," said Patrick Johnston, president of the California Assn. of Health Plans.

Soon after President Obama signed the healthcare law in March 2010, California took the lead and became the first state to enact legislation for an insurance exchange, which is designed to negotiate the best rates with insurers and help millions of consumers shop for policies.

Since then, state lawmakers have passed other laws implementing federal reform, including provisions that guaranteed coverage for those under age 19, allowed young adults to remain on their parents' policies until age 26 and mandated maternity coverage.

Jones said all those reforms — plus a new state requirement that health insurers spend at least 80% of premiums collected on medical care for individual policyholders — would remain intact without the federal law. Insurers contend that California's rule on spending for medical care may not stand if the federal law is deemed unconstitutional.

But the biggest blow by far would come if the Supreme Court ruling cuts off federal money for the two most expensive parts of the federal healthcare program: an expansion of Medi-Cal — the state and federal program for the poor and disabled — and subsidies for families purchasing private coverage.

Under the federal law, California stands to get as much as \$55 billion in federal funds for the Medi-Cal expansion from 2014 to 2019, according to the Kaiser Commission on Medicaid and the Uninsured, and a similar amount for subsidies for people who are now uninsured. An estimated 2 million people would be added to Medi-Cal, and 2.2 million Californians could be eligible for subsidies toward the purchase of private coverage.

Meanwhile, the California Health Benefit Exchange — using about \$40 million in federal money — has been setting up an enrollment process and marketing campaign to reach consumers in preparation for a January 2014 launch.

Peter V. Lee, the exchange's executive director and a former healthcare official in the Obama administration, said he's aware state lawmakers are looking at a health insurance requirement for all Californians, but the exchange has not taken a position while the court's decision is pending.

Lee said both a mandate and government subsidies are crucial components to ensure the exchange attracts a large enough pool of consumers to be effective.

"The exchange in California isn't pausing, isn't waiting, isn't taking its foot off the gas," Lee said. "There's a broad consensus in this state that we need to address the access and affordability problem together."

Consumer advocates are urging state leaders to forge ahead because, they say, the status quo is untenable for people with and without insurance. The average California family with coverage pays an additional \$1,400 in premiums annually to cover the costs of the uninsured, according to the California Endowment, a private foundation focused on health issues.

"It is a little premature to be reading an obituary" for the federal law, Insurance Commissioner Jones

said. "Having said that, we need to be prepared, and those conversations are occurring."

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