

John DiLorenzo
State Options Under Obama-Care: Should Oregon
Chart its Own Course?

Whatever you might think of the new federal healthcare plan, you have to give Speaker Nancy Pelosi credit for having engineered a miracle. Just weeks before the United States House of Representatives adopted the Senate version of President Obama's healthcare reform, the legislation was viewed by most commentators in the know as all but dead. But on the weekend of March 20th and 21st, following last-minute compromises on Medicaid reimbursement, abortion coverage, and a host of other issues, Lazarus rose from the dead and the Congress presented to the President a series of bills which together became what is officially known as the Patient Protection and Affordable Healthcare Act as modified by the Healthcare and Education Reconciliation Act.

The legislation, over 2,000 pages in length, became effective on March 30. Some provisions, like immediate access to insurance for uninsured individuals with preexisting conditions, elimination of lifetime limits, and extending coverage for young adults under 26 years of age, kick in this year. Other provisions like those which require individuals to purchase policies, tax credits, subsidies, penalties, and a variety of taxes, phase in between this year and 2017.

Many state attorneys general have banded together seeking to overturn the new law in the courts, focusing on whether the provisions that compel individuals to buy private insurance products exceed Congress's Commerce power. Just recently, Florida proposed a state constitutional amendment that prohibits government from requiring individuals to purchase health

insurance policies. There are similar initiatives in other states including one which has been filed in Oregon.

Other troubles are on the horizon.

The first program out of the gate, five billion dollars for the temporary high risk pool for people with preexisting conditions was supposed to last through 2014. It is now expected to run out in 2012.

And one of the most significant problems with the federal scheme has been forecasted by New York state's experience. New York became one of the few states that require insurers to charge the same rates for the same benefits, regardless of whether people are old or young, male or female, smokers or nonsmokers, high risk or low risk.

Healthy people began to subsidize people who needed more health care. The healthier customers soon discovered that the high premiums were not worth it and dropped out of the plans. The pool of insured people shrank to the point where many of those who were left had high health care needs. Without healthier people to spread the risk, their premiums skyrocketed.

The federal plan seeks to prevent that phenomenon by imposing fines on people who do not purchase private health insurance at subsidized rates. But analysts say that provision could prove meaningless if the government does not vigorously enforce the penalties or if too many decide it is cheaper to pay the penalties and opt out. Under the federal law, those who refuse coverage will have to pay an annual penalty of \$695 per person up to \$2,085 per family, or 2.5% of their household income, whichever is greater. Most feel that healthy people will

regard paying the penalty as the better option than buying private insurance at inflated prices.

I think it is a good bet that the federal plan will withstand a constitutional challenge. If the federal plan does not survive, Oregon should certainly go its own way. On the other hand, if the Obama Plan is here to stay, Oregon should heed the suggestion of our own Senator Ron Wyden, who encouraged those states who object to the federal plan to chart their own course and seek waivers under the plan. Last November, Senator Wyden was successful in inserting Section 1332 into the Act which accommodates state ingenuity. Under the State Ingenuity Amendment, states may design their own healthcare plans provided they meet the minimum federal standards and seek waivers for those plans. If federal waivers are approved, all of the tax credits and subsidies which otherwise would be

provided for those who are required to purchase insurance will be sent instead directly to the state plan to lower the expenses of the state plan's operations.

I believe we should take advantage of the state ingenuity provisions of the federal bill to remedy a major failing of our current healthcare system: the linkage of healthcare benefits to employment status.

During legislative hearings in February, I proposed an alternative healthcare system expanding beyond the numbers of persons covered by the federal plan to cover all Oregon's citizens, including all our children. The plan would provide essential benefits including preventative care and hospitalization services and would allow an opportunity for accessing the private insurance market to buy additional coverages not included in the basic plan. Most significantly, it would also

substantially increase the number of private sector jobs in Oregon.

Although many employers would choose to provide extra benefits to their employees or do so in response to collective bargaining agreements, Oregon employers would no longer generally be expected to pay health insurance premiums for essential benefits. That basic plan would be personal to each Oregonian, regardless of employment status.

Today's employer plans are often quite expensive. My experience might be similar to yours: We have more than 1,000 employees and owners eligible to be covered by our plan. Our blessing is that many of our employees have been with us for years. Our curse is that our employees who age need to access our plan more and more frequently. This may well mimic the

federal plan's ultimate experience if healthy people opt out and pay low fines instead.

The per capita cost associated with my proposal would be much less expensive than current plans because the group insured would be much broader. Instead of a group consisting of a tenured and aging workforce, more reliant on health services as time goes on, the Oregon essential benefits group would consist of every citizen of the state, including every child and every healthy person who is currently uninsured.

So how do we pay for it? Every Oregonian would pay his or her fair share for this coverage based on his or her consumption habits. Unlike the federal plan, there would be no fines or punitive measures taken to force anyone to buy insurance; rather, the premium would be automatic in the form of a constitutionally dedicated sales tax for healthcare, which

could not be diverted or increased without a vote of the public.

Because the sales tax would, in essence, be a healthcare premium, each of us who purchases goods or services (other than food consumed in the home, home utilities and shelter) would pay a fair premium for the basic health coverages we would all enjoy. It would be based on ability to pay because it would be based on ability to consume. And everyone would participate.

The plan assumes that approximately 10-12 billion dollars per year would provide an essential benefit package to every citizen of the State, including all of our children. Private insurers would either be required to respond to vouchers or would bid for regional contracts. Depending upon the level of federal reimbursement from the State Ingenuity amendment, we would likely require a 5 to 7% sales tax on goods and services.

The plan would also allow 910 million dollars to be redirected from the general fund because employers would no longer be taking deductions for basic healthcare insurance. In addition, approximately 280 million dollars would be redirected from the general fund because employers would no longer be taking deductions for many cafeteria plan benefits.

Added to that would be the savings the state would incur because we would no longer have required Oregon Health Plan expenditures. They would be included in the essential benefits package. Added to that would be the maximum possible federal matching, because this plan would by definition cover every single matchable person, every senior and every child.

We would derive other savings, many of which would be difficult to initially assess, but which would be real nonetheless. For instance, there would be fewer expensive emergency room

visits by the formerly uninsured because any Oregon citizen (and especially our children) could now visit a doctor before maladies became so severe as to require emergency medical treatment. The state and providers would have significant administrative savings since prequalifications would no longer require mounds of forms but only a driver's license or other proof of citizenship and residency.

However, one of the most significant silver linings of the plan would be its potential for economic development and specifically, job formation. We are one of the very few states in the nation that could dedicate a sales tax to a uniform system of healthcare because we are one of the very few states that has no sales tax. Because we are the only state on the West Coast that could, practically speaking, dedicate our sales tax to this purpose, we are also the only state that could eliminate an

employer's burden for financing the essential benefits package.

No nearby state could replicate that advantage to employers.

Labor intensive businesses would look to Oregon as a place where they could locate headquarters or facilities and instantly save 15% or more of their payroll costs by virtue of no longer having to pay for essential healthcare benefits. This would place Oregon at an incredible competitive advantage with respect to other states. As hundreds of new employers began to locate in Oregon, our state would, in turn, derive even more income tax receipts from their profits and more income tax from newly employed Oregonians as we moved towards a full employment local economy. And by the way, the Plan would benefit all employers, not just businesses. School districts in particular would have 12 to 15% more money to devote to education.

Now, many question whether Oregonians would ever approve a sales tax for anything.

I attribute past sales tax failures to one overriding concern: the proposals lumped the new revenues into the general fund or backfilled the general fund. Each time the voters viewed a sales tax as just another tax on top of the taxes we currently pay. As far as I know, no one has ever proposed that a sales tax be dedicated to providing healthcare benefits for all. We are all well aware of the consequences of lack of healthcare. We appreciate how dependent we are on our employers for healthcare and how precarious our job status really is.

As time goes on, I predict that Oregonians will begin to resent the provisions of the federal bill which begin to phase in after 2011. The freezing of Medicare advantage reimbursements, mandates requiring all legal residents to

purchase healthcare coverage, fines that will be imposed on citizens who choose not to purchase coverage and the penalties that will be imposed upon businesses whose employees purchase insurance will hardly be popular.

I also believe that Oregonians could have new freedoms under this proposal; no longer reliant on employers for basic healthcare. Free to pursue their dreams, like the arts, or their own small businesses.

I am committed to bringing together members of our business community and political leaders who have found themselves in polarized camps following the election on Measures 66 and 67 to move proactively and in a bipartisan way to solve this vexing social and economic problem. I can use your advice and your help in furthering that effort.

We should take advantage of the State Ingenuity
Amendment and chart our own course.

And what a marvelous thing it would be if we could make
healthcare available to every one of our citizens, especially
every child, and generate thousands of private sector jobs
besides. That would rank right up there with the beach bill and
the bottle bill and would be in the finest of Oregon's traditions.

I cannot tell you how much I appreciate your invitation and
I hope I can answer your questions and that you can, in turn,
give me even more to think about.