Now what? Obamacare and Wyoming.

On June 29th, the Supreme Court handed down its decision on the constitutionality of the Affordable Care Act ("Obamacare"). It was decided that the Act was constitutional, if the penalty for being uninsured were called a tax. The feature of the Act that was dealt with separately was the proposed Medicaid expansion to uninsured adults without dependent children, up to 133% of the federal poverty level (Note 1). It was decided that this voluntary state expansion was constitutional, but the federal government cannot reduce its Medicaid payments to a state for other services if the state decides not to implement the expansion.

There is doubt in some commentators' minds, and in mine as well, as to the appropriateness of the Supreme Court re-writing a law passed by Congress, to change an unconstitutional "penalty" into a constitutional "tax." They are supposed to decide on the law as written. However, my main points of discussion will be where we can go from here.

First of all, I was opposed to Obamacare. Although the healthcare system has a lot of faults (among them high costs and limited access), it is not possible to solve problems for hundreds of millions of Americans by issuing mandates from Washington, DC. Solutions work better when they come from closer to home.

Plan number one, therefore, is to repeal the law; if not now, then after the election of President Romney. One fortunate feature of the "tax" interpretation is that, because the mandate has been labeled a tax, it is now a revenue item, and can be repealed in the Senate with 51 votes, rather than 60. At present, there are 47 Republicans in the U.S. Senate.

Some states are deciding that they will not implement Obamacare, in spite of the Supreme Court decision. An amendment to the Wyoming constitution will be on the ballot in November of this year, stating that no government can compel Wyoming citizens to participate in any healthcare system. If the constitutional amendment passes, but President Obama is re-elected, and the Senate stays in Democratic hands, there will probably be a lot of confusion. Lawyers, get ready. I do think Wyoming should take advantage of the Supreme Court's permission to states to decline to expand Medicaid. We can look for ways to help the working poor without tying ourselves to federal requirements.

If Obamacare is not repealed nationally, or blocked at a state level, here are five ways the bill will affect us here in Wyoming.

<u>"Free" means someone else pays.</u>
Obamacare requires insurance plans (new plans first, and all plans by 2018) to cover preventive care (for example, mammograms, colonoscopies, blood screens) and check-ups without co-pays; also breastfeeding equipment, contraception, and domestic violence screening. The idea is that services like these should be free. In reality, very little in life is free. Air is free, water falls free from the sky, chokecherries grow on bushes for free, but colonoscopies, needles, and birth control pills come from somewhere. What "free" means here is that the insurance companies should cover these expenses by charging everyone higher premiums, and not charging you just for the services you use.

Now you might say, that's what insurance is--we all pay up a little bit, so that once every twenty years, when our house catches fire, we can collect and rebuild. The problem is that if "insurance" pays for check-ups, antibiotics for sinus infections, birth control, erectile dysfunction drugs (let's be fair, here), and flu vaccines, then it's no longer insurance. It's a savings plan for people who don't set aside any money for the everyday expenses of life. It's no wonder health insurance is expensive. Your auto insurance doesn't pay for oil changes and tire rotations. Your home-owner's insurance doesn't pay for repainting the kitchen when you're tired of those grease spots above the stove. If Obamacare is overturned, we need to encourage high-deductible, catastrophic plans. This would enable people to pay a more reasonable price for coverage for truly unexpected health emergencies.

The Obama administration has insisted that all insurance plans must cover birth control and abortifacients for "free," even if the employer or insurer has a religious objection. The idea that the insurers can provide them for free, thereby relieving the employer of this problem, is just misleading. First, since when does the government get to require private businesses to provide goods to people for free? Does the government require Wal-Mart to give bags of school clothes to poor kids? Second, as noted, "free" just means that someone else pays (and that won't help self-insured companies). Religious freedom is in the first amendment to the Constitution. The right to have other people pay for your everyday expenses is not in any amendment.

<u>No more cost-savings from high-deductible plans.</u>
Obamacare prohibits high-deductible plans (over $2000/individual or $4000/family). This will drive up the cost of insurance, as low-deductible plans encourage people to use more services, so the premiums are higher. Not all services are necessary; if people have to make decisions about their spending, they will spend less and use fewer services. (Do you eat more food at an all-you-can eat buffet for $13 or a sit-down meal for $10?) Shouldn't people be able to choose? They might have a healthy year, and be able to spend the difference vacationing in Yellowstone. (See note 2.)

<u>Public subsidies will be hidden in private businesses.</u>
Obamacare will prevent insurers from charging higher rates for people with pre-existing conditions. This sounds very compassionate, as long as we all realize that this will lead to higher rates for everyone else. If nine people are healthy, and pay $1000/month, and one person has heart disease and diabetes and pays $3000/month, then after the rates are equalized everyone will pay $1200, an increase of $200/month for the nine. If we want to subsidize our less-fortunate neighbors--which is not necessarily a bad thing--it would be more honest to tax ourselves directly, rather than to hide it amid the private sector.
Since 1990, the State of Wyoming has had a subsidized insurance plan for people with existing conditions who cannot get health insurance. The state's expenses are about $15,000,000/year, with about half of that covered by premiums, about a quarter is kicked in by insurance companies, and the last quarter comes from the general fund. This was a decision made by our local legislature. If the state cancels the plan and puts these people into the private market,

then I suppose that $7,500,000 will be divided among your premiums, as the companies raise rates to cover their new enrollees. That will be less obvious, but no less real.

We will be discouraged from saving to cover our own expenses.
Obamacare will put a $2500 limit on tax-free contributions to flexible spending accounts. The State of Wyoming, as an employer, offers state employees the ability to put pre-tax dollars in a medical savings account. Many other companies do this as well. Most years my husband and I put in about $1200 so we can pay for things not covered by insurance (i.e., co-pays, eye glasses). The year my daughter got braces we put in $3800, because braces weren't covered. We're lucky we were able to arrange that before Obamacare was implemented. (As far as I know, even President Obama isn't offering free braces yet.)

Doctors will be paid less.
Part of the funding for Obamacare is going to come from reducing the amount the government pays doctors to treat Medicare patients. There are 80,000 Medicare patients in Wyoming, and 23,000 Tricare patients--altogether about 20% of the population. (Tricare is the insurance plan for active-duty and retired military. Its payment schedule is based on Medicare payments.) Half of Wyoming is already considered a health professional shortage area. If a few doctors or nurse-practitioners decide they've had enough, and throw in their stethoscopes, it will be that much harder to access care.

In summary … the government will pay the hospitals and doctors less for 20% of the patients, but the patients will want more services (because more services are "free"). We'll throw in the 15% of the patients who are on Medicaid here too--paid for by the rest of us. The patients with other insurance (50%) will pay higher insurance premiums and want more services (for "free"). Their extra premiums will go to cover the 15% who were previously uninsured and used to use fewer services because they had to pay for them out of pocket (see Note 3). The rest of the cost of their insurance will be paid for by the government. The government gets all its money from … well, it's us again!

What will I do if Obamacare is repealed or blocked in Wyoming? Cheer! Then I will roll up my sleeves and work on some better ideas. Here are some of my thoughts on what to do instead. For the market to work as it should, you need transparency, a good supply of providers, no extra imposed costs, and a rational demand.

Transparency
The main objection to the health insurance exchange idea is its association with the whole Obamacare scheme. However, transparency is necessary for private markets to work. Right now, the market for health insurance is very murky. According to one of my sources in the state Insurance department, there are actually quite a number of policies available in Wyoming at this time, many with high deductibles. However, if you go on-line to try to buy insurance, it is virtually impossible to compare policies by cost and coverage. I think even if the Act is overturned the Legislature should direct the Insurance department to adapt parts of the

exchange concept to provide transparency for the employer and individual consumer. This will improve access and make costs more competitive.

Patient charges also should be more transparent. The patient often has no idea what a procedure will cost; in fact, the prescribing physician often has no idea either. Paying for a healthcare procedure is much more complex than paying for groceries or building a deck, but some more clarity would be helpful. The Wyoming Hospital Association is taking some steps in this direction, and at least thirty states have passed laws to encourage transparency in this area. I will be reviewing other states' legislation to see if there are any ideas that would be helpful in Wyoming.

Providers

The Wyoming legislature and various federal-level people have encouraged the idea of cross-state sales of insurance policies. Evidently there has been no interest on the part of out-of-state companies in selling health policies in Wyoming. We have a limited supply of providers; this makes it difficult for insurers to arrange for desired services and reimbursement rates, and for consumers to have choices. (It also makes doctors and nurses very tired.) We have a program that recruits providers to Wyoming by helping them pay for their school loans. I would like to continue this program. In addition, I think we need to increase the size of the nurse-practitioner and nurse training programs at UW. These steps would improve access to services and give patients more options.

Costs

Malpractice insurance costs drive up the cost of care by adding expenses to a medical practice and because providers feel the need to protect themselves from claims by exercising "defensive medicine." By statute, malpractice insurance is "noncompetitive." This means that the Department of Insurance must review and approve the rates for malpractice insurance. I think their approval procedure needs to be reviewed; the premium-to-payout ratios need to be evaluated. A second consideration is the malpractice claim process. Many states have medical review panels that arbitrate claims. The Wyoming Supreme Court stated in 1988 that mandatory arbitration was unconstitutional, but other acceptable procedures could be developed, in addition to caps on non-economic damages.

There are other problems with costs, but many of them can't be addressed at the level of the state legislature.

Demand

The demand for health care is distorted by the fact that most people don't pay for their own care. Transparency in costs, flexible savings accounts, and high deductibles encourage consumers to make thoughtful decisions. In addition, the current tax advantage for employer-paid insurance should be changed to apply equally to people who buy their own insurance. If flexible benefits plans and federal income tax credits were available to all buyers, then people could make their own choices, their individually-purchased insurance would be portable if they

changed jobs, and people would not have to worry about losing coverage. This, however, is an issue for the U.S. Congress, not the Wyoming legislature.

Improving our health care system will be a tough job, but it is not hopeless. I think we can do it without resorting to the giant ball of rubber bands covered with lint that is known as the Affordable Care Act.

Feel free to e-mail me with any of your questions or ideas. The e-mail link is on the Home Page. You are welcome to forward this commentary, but please note the author (Sue Wilson) and provide a link to my website.

Notes

1. That would be just above an annual income of $14,800 per person, i.e., a person working almost full-time at the minimum wage of $7.25/hour).

2. "In a famous RAND study, patients with firstdollar insurance coverage consumed 43 percent more health care than patients who had to pay a large deductible, and yet the two groups experienced indistinguishable health outcomes." Source: "Hazards of the Individual Health Care Mandate," by Glen Whitman, Cato Policy Report, September/October 2007, available at http://www.cato.org/pubs/policy_report/v29n5/cpr29n5-1.html.

3. Since 1986 the federal Emergency Medical Treatment and Active Labor Act has required that hospitals cannot turn people away if they have a medical emergency, no matter what their insurance status.
