

**The Landmark, Platte County (MO) Newspaper**  
**July 26, 2010 Edition**

The Obama administration's Patient Protection and Affordable Care Act has faced some hefty backlash in public opinion and while a few states have adopted legislation enabling citizens to opt out of the mandated health care coverage that will go into effect in 2014, Missouri is the only one to put it to a vote of the people.

"We did that because we suspected that the governor would veto it," said Missouri state senator, Jane Cunningham, one of the bill's sponsors. "There was such a citizen uprising. They wanted a way to send their voices to Washington DC and the ballot was the only way to make their voices officially heard."

Intended to protect citizens from penalties that may be charged by the IRS through new health insurance reporting rules in the federal income tax code, the official ballot language for Proposition C will read as follows:

"Shall the Missouri Statutes be amended to:

- Deny the government authority to penalize citizens for refusing to purchase private health insurance or infringe upon the right to offer or accept direct payment for lawful healthcare services?
- Modify laws regarding the liquidation of certain domestic insurance companies?

It is estimated this proposal will have no immediate costs or savings to state or local governmental entities. However, because of the uncertain interaction of the proposal with implementation of the federal Patient Protection and Affordable Care Act, future costs to state governmental entities are unknown."

Proposition C, therefore, is a vote on the individual mandate, the one very small part of the federal health care reform act which requires most people to carry health insurance, much like current laws that force car drivers to carry auto insurance. It is not a vote on the whole health care reform package. There is not, at present, anything in the works that endeavors to repeal, replace or re-write the full scope of President Obama's health care package, however, as the ballot language explains, repercussions could have far-reaching consequences.

Clint Bolick, director of the Scharf-Norton Center for Constitutional Litigation at Arizona's Goldwater Institute and a co-founder of the Institutes of Justice plans to help defend, all the way to the Supreme Court if necessary, states that have implemented "opt-out" measures. Bolick said that the Constitution's 10th Amendment, which holds that states reserve all powers not specifically granted to the federal government or prohibited by the Constitution, has recently seen a rise in influence in the Supreme Court.

"After many decades in which the Supreme Court held that the 10th Amendment was a 'truism' that meant little, the United States Supreme Court has reigned in the federal government in numerous areas and has held in favor of the states in several clashes," said Bolick.

His greatest hope for the nationwide Health Care Freedom movement, said Bolick, would be that Congress is forced "back to the drawing board" because the court finds it lacks the authority to force citizens to purchase government-approved insurance.

"It would help us return to the principle that the federal government has limited and defined powers," said Bolick in an e-mail exchange with *The Landmark*. "It has grown so large and powerful that the framers wouldn't recognize it."

A lawsuit with similar intentions was filed in by Missouri's Lt. Governor Peter Kinder on July 7.

Bolick said that he'd like to see the PPACA repealed, starved of funding or struck down by the court. Senator Cunningham agrees.

"I would support having it killed in the courts," said Cunningham. "My hope is that the Supreme Court will find for Missouri and for the other states over the federal government."

When citizens start going to the polls, Cunningham said, Missouri lawmakers will have to respond or they won't be re-elected.

"I also hope that it gets repealed at the federal level by federal officials or that it gets defunded at the federal level. I would support all of those outcomes, but my purpose in putting this in was not as a setup to those outcomes, but to defend Missourians against those (IRS) penalties and to authorize the attorney general to defend us," she said.

In a YouTube video of speech posted on the Missourians for Health Care Freedom web site, Cunningham states, "You are going to be forced to buy (insurance) and if you don't, you will be fined on your tax return and if you don't pay that fine, you will be subject to imprisonment. Now this does not sound like America but that is basically what the federal law does."

While there is some dispute over the possibility of criminal sanctions against those who fail to pay fines for remaining uninsured, the final plans for implementation of the law remain vague. The law specifically states that criminal penalties, as well as IRS levies and liens will not be a part of collection activity for fines, however a November 9, 2009 letter from Thomas Barthold, Chief of Staff of the Joint Committee on Taxation to Dave Camp of the House of Representatives states that, "The (tax) code provides for both civil and criminal penalties to ensure complete and accurate reporting of tax liability and to discourage fraudulent attempts to defeat or evade tax." Barthold goes on to say that civil and criminal penalties stem from willful non-compliance or fraud.

Whether the wording of the PPACA or the IRS tax code would take precedence remains to be definitively answered. Both Cunningham and Bolick said, however, that since the individual mandate on health care does not take effect until 2014, their effort to have it

heard in the Supreme Court should be completed well ahead of time so that people who choose to opt out aren't faced with the possibility of steep fines, penalties and interest charges in the event that it does not win.

If it did, though, and Bolick and Cunningham do succeed in sending congress back to the drawing board, it could have numerous possible impacts on American citizens. First of all, though, what does the health care reform act, in its current, pre-Prop-C construction, do?

Progressing in stages until its full implementation in 2014, the Patient Protection and Affordable Care Act mandates that all individual health insurance packages cover emergency room visits, maternity and newborn care, prescription drugs, mental health and substance abuse, preventative care and pediatric care including dental and vision, among others, and seeks to extend services to a wider range of people by removing pre-existing conditions as grounds for exclusion by insurance companies and limiting amounts that companies can charge. By the new law, coverage may only be revoked in cases of fraud or intentional misrepresentation, any primary care or emergency room must be counted as "in-network," waiting periods for services may not exceed 90 days and children may be covered on their parents' policies until they reach the age of 26.

Current plans that meet with the federal requirements will be "grandfathered in" to the new system. Medicare and Medicare Advantage plans will also remain in effect with a phase-in program of prescription drug rebates intended to fully close the doughnut hole by 2020. The plan also sets up an "Exchange" to help citizens locate affordable insurance as well as cooperatives and high-risk pools intended to increase membership and decrease premiums.

Penalties for non-compliance will affect both businesses and individuals. Most individuals, barring those who can prove religious exclusions, Indian tribe membership or personal hardship, who go for three or more months without federally approved insurance will be subject to fines starting in 2014 at \$95 per uninsured household member or 1% of household income and rising to 2.5% of household income in 2015 and beyond.

Businesses will face stringent rules in insurance provisions for employees. Those with 200 employees or more must automatically provide new hires with immediate insurance while those with 50 or fewer full-time equivalent employees (the number of total hours worked by employees divided by the number of employees) will be expected to pay at least 50% of employee premiums, which must leave employee cost-sharing at no more than 9.5% of total annual income. Businesses that fail to provide insurance will be fined \$2,000 per year for all but 30 of their full time equivalents. In other words, a company with 40 full-time equivalent employees would pay a \$2,000 fine on ten employees, for a total annual penalty of \$20,000. Businesses that do provide insurance but leave employees paying more than 9.5% of their annual income toward premiums will face additional fines as well and may also have to provide vouchers making up the difference for employees paying more than 8% of their annual income in premiums who use the exchange to find cheaper insurance.

A tax credit will be available to small businesses that provide insurance to employees, but that credit is only good for two years.

To get at the pros and cons of Proposition C and its possible future impact on health care, *The Landmark* consulted several experts from various careers and walks of life and asked them to share an opinion.

**Rob Schaaf, physician and state representative, 28th district**

In a recent interview about his run for the Missouri senate seat, Dr. Schaaf said he not only supports Proposition C but was one of the sponsors of the bill in the Missouri house. Schaaf said that when the American Medical Association endorsed Obamacare, he dropped his membership.

Following up a week later, he added, "My only regret is that I have but one AMA membership to give up for my profession. The American Hospital Association endorsed Obamacare because they're going to make a huge killing off this. Requiring everybody to purchase insurance is going to be a big boon for them."

Schaaf said he expects health care reform to drive up health care prices, flood doctors with patients and reduce the quality of care or force doctors to have to turn patients away.

"It is going to increase demand," said Schaaf. "When you have all of these people armed with their insurance policies, which they will consider a license to consume, they will start using services more than the medical community can provide."

With rates set mostly by insurance companies, Schaaf said, most doctor's aren't really going to see an increase in profit from health care reform.

"There are a lot of older physicians who are fed up with the government's interference in their ability to take care of their patients and a lot of them have already decided to retire early as the low pay and increased working hours have worsened," he said. "I think that's only going to get worse and it's going to cause us to lose what I call our 'brain trust,' the collected wisdom and experience of the most experienced doctors."

Getting more competition into the health care market, Schaaf said, will be "the chief force that brings prices down for consumers." Schaaf said that the health care reform act fails to address the costs of medical malpractice through comprehensive national tort reform and that the new requirements will negatively impact the rest of the economy as well.

"The guaranteed issue requirement is going to raise the cost of health insurance for everyone," he said. "As it is now, if you're in a pool that is fairly limited, when you open that up and make it available to the people with the most expensive diseases, you're going to be subsidizing their care. When businesses start having to provide for insurance, that's

going to rob from their bottom line and is going to translate into less money for new workers. It's going to hurt our economy and put more people out of jobs."

### **Dave Dillon, spokesperson for the Missouri Hospital Association**

"I don't know that in fact you could say that we're opposed (to Proposition C)," Dillon said. "We think that voters ought to have the facts about it before they go in and make their voices heard."

Dillon said that our current system, in essence, forces those who do have insurance to subsidize the care of those who don't. The costs of caring for those who are unable to pay, he said, is shifted and becomes a part of the premiums of those who do have insurance.

"We've always supported increased access to coverage because its one of the ways hospitals stay solvent," said Dillon. "It's also very important to individuals to maintain their health and insurance is one of the factors that's been proven to do that. People don't wait as long to get care and when they do, they use an appropriate venue--a primary care physician's office instead of the emergency department."

Aware of the ongoing expense that hospitals face in treating those who cannot pay, the federal government currently directs funding through the Disproportionate Share Hospital (DSH) program to help compensate those costs. Leaning on the idea that if everyone has insurance, this program will no longer be necessary, the health care reform act phases out DSH funding over the next several years. Dillon said, however, that if individuals have the option not to comply, the program will lose both its current funding through the DSH and will still be shouldering the burden of treating the uninsured, whether or not they can pay, at an estimated cost to Missouri hospitals of \$500 million over the next ten years.

"There are those that will say that the penalty for not buying (insurance) is cheaper," said Dillon. "The down side of that is if that person has a medical emergency of any kind and they don't have the money to cover it, then that cost will be shifted back to the people that did buy insurance."

"The MHA knows realizes that there's a lot of anger out there and that people probably want to vote to send a message," said Dillon. "We're not really advocating that people say no (to Proposition C), what we're telling people is, if you're going to vote with this, vote with your eyes open because there are going to be consequences. Sending that message to Washington, it may hit you right in the pocketbook."

### **Scott Day, co-owner, Day Insurance Solutions and treasurer of Kansas Association of Health Underwriters**

Scott Day has been doing a lot of public speaking lately, most recently sharing his knowledge of healthcare reform with members of the National Federation of Independent Business as well as the Kansas Department of Transportation Disadvantaged Business

Enterprises Conference.

Watching from across the state line, Day said he hopes that Proposition C will pass in Missouri.

“Everybody’s challenging the constitutionality of requiring individuals to buy health insurance,” said Day. “It could just repeal the individual mandate, which means they don’t have to repeal the rest of the health insurance law. But hopefully it would lead to the repeal of the whole PPACA.”

Day said that the new health care laws could deter employers from providing health insurance because for many, it will be less expensive to pay the fines than to provide federally approved coverage. Employers who are already providing coverage that would meet with the new federal requirements, Day said, will face dramatically increasing insurance premiums and could face a \$3000 fine per employee that finds more affordable coverage in the American Exchange, qualifies for a government subsidy, and were paying more than 9.5% of their family income towards the employee premium. Those currently providing coverage that doesn’t meet federal regulations, however, will face a \$2000 per employee fine--minus the first 30 employees--and may choose to drop employee insurance programs altogether, leaving more workers uninsured.

Meanwhile, said Day, if an employee is paying more than 8% of his or her total income in insurance premiums and can go to the exchange and find a cheaper rate, the employer will have to provide a voucher equal to the current employer contribution to health insurance to buy the cheaper insurance in the exchange. The employer could face a fine of \$3,000 if the employee was paying over 9.5% in premiums. The employer will also have to notify all employees about the insurance offerings available through the exchange.

“In other words,” said Day, “employers are damned if you do and damned if you don’t.”

Day also said that under the new laws, employers must show the value of health insurance benefits on employee’s annual W-2 forms.

“There’s a rumor that they’re going to eventually tax those benefits,” he said. “Under the current law, it is for reporting only, but the door is wide open for them to tax benefits later because they’ll have all the information.”

Day said that between the upcoming \$8 billion tax on insurance companies, a \$2.3 billion tax on pharmaceutical companies and a \$2 billion tax on medical devices, prices for premiums are going to go “through the roof.”

Modified community ratings, said Day, will also contribute to higher premiums. With modified community ratings, he said, what happens is that while insurance companies are currently allowed to charge seven or eight times the amount of their lowest premium for older people, the new laws will limit that to a three-to-one ratio. A former high school

teacher, Day walks through the math as follows:

“Let’s say a 12-year-old costs \$40 per month. Under current law they can charge seven times that for a 64-year-old. Forty times seven is \$280 per month for a 64-year-old. To illustrate how the 3:1 ratio is going to change the premium, we add the \$280 from the 64-year-old plus the \$40 from the 12-year-old and that equals \$320 total premium. Divide that by a factor of four, so  $320/4$  equals \$80. That is now the price of a 12-year-old’s premium. The new rules are that you can’t charge more than three times the lowest amount, so  $80 \times 3$  is \$240—and that now equals the price for a 64-year-old. And to balance this, to show that its true, you add the 80 plus the 240 and it equals the same \$320 as the previous rating. In a perfect scenario, they wanted a three to one ratio. It makes the prices cheaper on the 64-year-old but it raised the price of your younger premiums—it doubled them.”

Day adds that while these new, lower premiums will entice older clients into purchasing insurance, it will also drive up the number of claims. Younger people, choosing fines over high premiums--\$95 annual in year one--will not flood the system with money, said Day, but instead will leave insurers having to offset costs by raising premiums.

“There are so many things in this law that will not work,” said Day.

**Suzanne Discenza, associate professor and director of the master of health care leadership program at Park University**

Dr. Discenza, who teaches health policy at Park University, said she has mixed feelings about Proposition C and the health care reform act.

“Like everybody else, I can see more than one viewpoint,” said Discenza. “I’m very strong with people’s right to be able to have some say in their government. We are a government of, for and by the people. On the other hand, I see some of the issues that have pushed leadership in many cases to try to do something about this problem we have. I’m talking about leadership on the federal level. It’s not all bad. Some of the things needed to happen. It may not be all good either.”

Discenza said that getting more people insured would help keep them out of expensive emergency rooms and would also provide for preventative care.

“The uninsured enter emergency rooms because we have laws called EMTALA (Emergency Medical Treatment & Labor Act) which say that anybody presenting themselves to an emergency room must be treated to the point where they’re stabilized,” she said. “The emergency room costs are extremely high. People with average incomes are going to be hard-pressed to pay for the thousands of dollars that are incurred in the emergency room. Many people, whether their intentions to pay are good or not, cannot afford that.”

Discenza said that medical bankruptcies account for half of the bankruptcies in this

country.

“I was in favor of provisions that allow more people prior to this to sign up for things like Medicaid which allows those people that cannot afford it at all to be able to get services,” said Discenza.

“The other thing is the elderly,” she said, explaining the Medicare doughnut hole. “There are people that cannot pay almost any amount of money and if they have to choose between heat, utilities and food and then pay for their prescription drugs, they’re going to most likely choose heat or air conditioning or whatever it is so that they can survive. Those are some things that definitely needed reform. Also, families who have children with special disabilities, more of those needed to be covered. The list goes on and on.”

Discenza said that she expects costs from the new health care reform plan will go up in some areas and down in others.

“One of the things that I think is good about the (Proposition C) referendum is it does give people a chance to weigh in on what they think. I hope that people will get educated about the issues and won’t do it as a political knee-jerk reaction to vote for this mandate without understanding what it means. I am a believer that people have a right to help decide their own destiny and hopefully do have the right to be able to vote,” said Discenza.