Experts see few barriers to stop people from buying health-care coverage only when sick

By CHARLES ELMORE

Palm Beach Post Staff Writer

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Marlene Mahle teaches a graduate course at Florida Atlantic University in Boca Raton on the federal health care law under review by the Supreme Court. She does not have to look very far to gain insight into why people might decide not to buy health insurance.

Take her own 29-year-old son.

He is single. His employer offers health insurance but requires him to pay a large portion of the cost. He decided to go without.

"I say, 'Are you crazy?' " Mahle said. "But I found a lot of people say, 'I'm young and healthy. Why should I be forced to pay?' "

Things are tough enough in this economy without requiring healthy folks to pay for insurance, her son said. He can't imagine changing his views even if the federal law is upheld.

"If I am forced to pay for health insurance in any amount, regardless of the benefits or discounts, I will decline to do so at all costs as a matter of personal choice and as a protest to the continual advancement of our governments to undermine that freedom of choice," Chris Mahle said.

Tens of millions of people every year decide they can't afford or simply won't buy health insurance. Some are out of work or underemployed. Many are young and early in their working careers, self-employed or without access to large group plans through work.

The Obama administration wants to cover 30 million more people by providing incentives for nearly everyone to buy insurance. The Affordable Care Act expands government programs such as Medicaid, offers subsidies for lower-income people and imposes a penalty for those who don't sign up with a private, employer-based or government plan.

Now the individual mandate to buy insurance is in the cross hairs of a challenge to the law by Florida, 25 other states and business groups before the U.S. Supreme Court. Among other objections, opponents say forcing people to purchase insurance or pay a penalty is a step too far, an unconstitutional overreach by the government.

The court's decision, expected as a landmark ruling in June or July, could uphold the law, strike it down or perhaps kill the mandate while leaving other parts intact.
But if the law and the mandate survive, there's still a fundamental problem with incentives, said Bruce Vogel, associate professor in the Department of Health Outcomes and Policy at the University of Florida's College of Medicine.

"For many, a penalty is a few hundred dollars," Vogel said. "A premium is a few thousand. That really creates an incentive to wait until you're sick to get health insurance."

Penalties politically sensitive

The question of how tough to make enforcement proved to be a politically sensitive issue in the bill's passage. The taxpayer is protected from criminal prosecution for failure to pay the penalty, though the IRS could deduct the penalty from refunds, according to the Congressional Research Service.

Under the new law, consumers can't be turned down for insurance because of a pre-existing condition. Insurers would be subject to what is known as "guaranteed issue."

"I expect that people presently without health insurance who do not qualify for government subsidies will be inclined to pay the penalty and then rely on guaranteed issue should they become ill," Vogel said. "This will contribute to what actuaries call a 'death spiral,' where premiums will rise considerably since costs have increased, and low-risk individuals will choose to drop insurance, thereby further worsening the risk profile of the insurance pool."

He sees rapid inflation in commercial health insurance premiums. And in his view, that will open the door to calls for an option previously seen as politically unrealistic - a single-payer, Canadian-style system.

'Virtually everyone is obeying'

Supporters of the law say fears of an incentive problem are overblown. The Congressional Budget Office last year estimated about 4 million U.S. taxpayers will refuse to buy insurance and pay a penalty in 2016, a little more than 1 percent of the general population of more than 300 million.

Backers of the law also point to Massachusetts, where under a similar program the number of uninsured fell from 6 percent in 2006 to below 2 percent, according to a report this month by the nonprofit Massachusetts Taxpayer Foundation.

"There are very weak penalties in Massachusetts and virtually everybody is obeying," said Henry Aaron, a senior fellow with the Brookings Institution, a progressive think tank.

Consumers should be "rooting for as large an affirmation of this bill as possible" from the court, Aaron said. "Even if you think it is a very imperfect bill, if it is tossed, we are going to do nothing for many years on a very deep problem. We spend a fortune on health care, more than anyone else, and we should get more for our money than we do."

The administration points out people could lose benefits already being phased in if the law is overturned: 238,000 Florida seniors saved $142 million from benefits to cover the prescription medicine "doughnut hole"; 157,000 young adults in Florida are carried on their parents' policy until age 26; almost 6 million residents benefit from having lifetime policy limits removed.
"The Affordable Care Act will help control health care costs and save money for families in Florida and across the country," said Keith Maley, spokesman for the U.S. Department of Health and Human Services.

Others see warning signs in Massachusetts of problems with "gaming the system" that could be magnified on a national scale.

A study released in November by the Beacon Hill Institute at Suffolk University in Boston found more than 2,000 people bought insurance when sick and later dumped it at an estimated cost to insurers of up to $37 million in 2009.

Self-interest to drive decisions

In 2008, more than 26,000 people and 758 businesses paid fines of $23 million rather than buying insurance.

State-subsidized insurance plans added 319,000 customers between 2006 and 2010 while enrollment in employer plans was flat, the study found.

Skeptics see incentives for some employers to steer workers to government plans under the federal law, increasing costs to taxpayers.

"As people calculate their own rational self-interest, the firewalls are going to fail," said Ed Haislmaier, a senior research fellow at the Heritage Foundation, a conservative think tank. "It will be a combination of rational self-interest by the individuals and their employers that will produce failure."

If the court kills the mandate while upholding the rest of the law, it would only speed up the unraveling, he said.

"The effect would be pulling the pin on a hand grenade and throwing it back in the lap of Congress," Haislmaier said.

Insurers have argued that if the court strikes down the individual mandate, it also should kill requirements for guaranteed issue and "community rating," meaning rates must be set on a wide pool of people.

America's Health Insurance Plans and the BlueCross BlueShield Association, which filed a brief with the Supreme Court, warned of "severe unintended consequences" without the mandate.

Not everyone thinks the Affordable Care Act would be rendered unworkable if the individual mandate goes away.

A study in October by researchers at the Lewin Group, a Virginia-based research firm owned by UnitedHealth Group, figured the act could still cover 23 million people who would have been uninsured without the law. Without the mandate, premiums in the individual market would increase by 12.6 percent, less than other studies have predicted, the study said.

"Our study suggests that although the mandate would have important effects on premiums and coverage, it might not be essential to the act's successful implementation," the report said.

Opt-outs affect others
At FAU, the law and the court case have been fodder for discussion in classes taught by Attila Hertelendy, professor of health care administration.

One of the issues that makes this a tough policy problem: People who opt out of health insurance are not only affecting themselves; they are affecting what others pay. Hospitals are obligated by law to treat everyone in an emergency, even those who cannot pay. Any unpaid costs are passed along to others. And those who decline to pay insurance premiums when healthy raise the cost for those who do pay.

"If people skirt the system, you're invariably going to raise the cost," Hertelendy said.

But if the new law is upheld, will it make people like Chris Mahle want to opt in?

"Absolutely not," Mahle said. "I will no longer have a choice about how I would like to live my life or spend the money that I earn. If I should wish to gamble on the lack of any kind of personal insurance, I should be able to experience these very personal life choices without financial victimization from Big Brother."