

Lewiston Tribune, Friday, June 18, 2010 – by William Spence (2 pages)

Feds seek dismissal of health reform suit

Several states have challenged insurance requirements

Federal attorneys are asking that a multistate lawsuit over health care reform be dismissed, in part because the plaintiffs failed to demonstrate they've been harmed. The suit was filed the same day President Barack Obama signed the legislation into law. Among other complaints, it says the requirement that most people purchase health insurance by 2014 violates the commerce and due process clauses of the Constitution.

"None of Congress' enumerated powers includes the authority to force every American to buy a good or service," the lawsuit notes. "If Congress can do this, there will be virtually no sphere of private decision-making beyond the reach of federal power."

The states also object to a sharp expansion in Medicaid eligibility, saying it places an undue financial burden on them. Moreover, the reform bill "infringes on the states' constitutional status as sovereigns, entitled to cooperate with but not be controlled by the federal government under the Medicaid program."

However, in the motion to dismiss filed late Wednesday, Assistant U.S. Attorney General Tony West noted Congress has expanded Medicaid eligibility numerous times since the program was first created in 1965. State participation in the program has always been optional, he said, but once states agree to accept the federal payments, they're obliged to comply with the requirements.

The claim that this latest reform intrudes on state sovereignty, West said, would preclude Congress from ever amending federal statutes in a way they didn't like. Moreover, "it would allow states to accept federal money and ignore the terms on which it is extended."

In short, he said, the lawsuit is simply an effort on the part of the states to have the court "relieve them of a difficult political choice."

As for the individual health insurance requirement, West said, the states have not standing to challenge that mandate because it doesn't affect them, and it's "entirely speculative" whether individuals will be harmed.

In addition, the provision of health care services to the uninsured shifts billions of dollars in costs to other segments of the market - a decision, the motion notes, "that in aggregate substantially affects the \$2.5 trillion interstate health care market." And having determined the minimum coverage requirement "is essential to creating an effective health insurance market," Congress is well within its rights to regulate that decision.

Reasonable people can disagree about how to resolve this issue, West said, "but those disagreements can move from the elected branches (of government) to the judicial area only when a concrete case or controversy frames a genuine constitutional issue" - a standard he said hasn't been met in this case.

Washington Attorney General Rob McKenna - a Republican who joined the lawsuit over the objection of Democratic Gov. Chris Gregoire - said nothing in the motion to dismiss changes the states' opinion they will prevail.

Suit 1

"While we all agree people should have access to quality, affordable health care, reform is too important to build on an unconstitutional foundation," he said in a news release. "The states plan to pursue this litigation as far as necessary to obtain relief for our citizens and our states."

Idaho Attorney General Lawrence Wasden was unavailable to comment. Spokesman Bob Cooper said the department expects it to take "at least two or three years" before a final resolution to the lawsuit is achieved.

Copies of the states' complaint and the federal government's motion to dismiss can be found at www.healthcarelawsuit.us.