POLICY *memo*

Goldwater Institute
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To: State legislators and policymakers
From: Dr. Byron Schlomach, Director of Center for Economic Prosperity, and Christina Sandefur, Attorney
Re: Next Steps on Health Care Policy

The United States Supreme Court ruling in *NFIB v. Sebelius* effectively made state policymakers the last line of defense against the federal takeover of the nation's health care industry. Although it ruled that the federal government cannot coerce states into expanding their Medicaid programs, the Court allowed the federal government to tax individuals who do not obtain government-approved health insurance policies. That decision, despite opening the door to federal regulation, also means that state legislatures are in a unique position to adopt meaningful health care reform policies.

We recommend that lawmakers adopt the following policies to preserve state sovereignty, protect freedom, and maximize individual choices in health care:

1. **Decline to establish a state health insurance "exchange."** An essential first step to protecting health care freedom is declining to establish state-run health insurance "exchanges," which are federally-sanctioned, invitation-only clubs where only government-approved insurance companies can sell only government-approved policies. If a state declines to set up an exchange, the federal health care law authorizes the federal government to create one in that state. Here are the top reasons states must reject exchanges:
    a. *State exchanges will hurt local businesses.* A state health insurance exchange would impose crushing burdens on local businesses. Employers of more than 50 people that do not provide federally-approved health insurance could be forced to pay fines of at least $2,000 per employee per year. But no such penalties exist if a state declines to set up an exchange.
    b. *State taxpayers will foot the bill for Washington's mandates.* Federal funding assistance for operating state exchanges will not be available after 2014, leaving states fully responsible for shouldering the costly burden of running an exchange. Therefore, states that establish exchanges are putting their own taxpayers on the hook for this federal mandate.
    c. *Exchanges will facilitate taxpayer subsidies to health insurance companies.* The state exchanges are the vehicle through which billions of direct taxpayer subsidies to insurance companies will flow. If a

state declines to set up an exchange and the federal government establishes an exchange for a state, these subsidies will not be available.

d. *Exchanges limit health care freedom.* An exchange conflicts with the Health Care Freedom Act which has been adopted in Arizona and 13 other states, to protect people's rights to make their own health care decisions.

e. *State-established exchanges will not protect local control.* Some state policymakers have been sold the false bill of goods that setting up their own exchanges would shield their citizens from federal control. But Washington bureaucrats have the final say even in state exchanges about which doctors and insurance plans can participate, and which benefits must be offered.

f. *States that set up exchanges are partnering with the federal government to enforce the federal health insurance mandate and collect penalties and taxes from their residents.* Far from protecting their citizens, states that create exchanges must give the federal government sensitive information about citizens' health care choices. States that create exchanges are voluntarily surrendering their sovereignty and subjecting their citizens to federal regulation.

Legislators can decline a state exchange through an affirmative legislative ban or by declining to appropriate money to any gubernatorially-created exchange.

2. **Decline to expand state Medicaid rolls.** The federal health care law provides for an unprecedented expansion of Medicaid, inducing states to extend coverage to all people under 133 percent of the federal poverty line. This summer, the Supreme Court ruled that the federal government cannot coerce states into expanding their Medicaid programs by threatening to withdraw that state's Medicaid funding. This means states cannot be punished for refusing to enlarge their Medicaid rolls, and policymakers should use this opportunity to reform rather than expand the program. The most current estimate from the Arizona Health Care Cost Containment System (AHCCCS) is that expanding Medicaid as prescribed in the law would cost the state an additional $940 million between 2014 and 2017.

3. **Refrain from adopting health care policies that are inconsistent with the Health Care Freedom Act.** The Health Care Freedom Act prohibits the government from directly or indirectly compelling participation in a health plan or otherwise interfering with an individual's freedom to directly purchase lawful medical services. The federal law is inconsistent with the Health Care Freedom Act because it directly mandates that individuals purchase government-approved health insurance and indirectly coerces them by imposing tax penalties for failing to do so. This tension is currently at the core of Coons v. Geithner, the Goldwater Institute's legal challenge to the federal law that is still pending in federal court.

4. **Require price transparency for medical services.** Some say the rising cost of health care illustrates how markets "fail" in that unique industry, but the truth is there has been no real market for health care in the United States in decades. Between federal programs that pay directly for health care and income tax policy that encourages employers to provide health insurance, patients have been deprived of cost information. The practice of concealing cost information from everyone but government and insurance companies is so common that cash payers for health care rarely obtain prices even when they specifically ask for them. States should prohibit providers from charging patients for any service where prices have not been meaningfully disclosed and consented to prior to services being rendered. The only allowable exception to this rule should

be for individuals whose lives are at risk and are not in a condition to give consent. Since the easiest way to fulfill this requirement will be to post prices, providers will likely do so.

5. **Open the health insurance market to competition.** Several years ago, the Goldwater Institute published a report urging lawmakers to permit taxpayers to purchase health insurance policies written out-of-state. The federal health care law explicitly authorized states to enter into compacts to build multi-state markets for health insurance. Such a policy would allow for greater portability of insurance policies, greater competition in the health insurance market, and ultimately, lower-cost health insurance alternatives. States should take advantage of this opportunity right away.

6. **Plan now and pursue a broadened waiver for Medicaid.** Rhode Island was granted a broad waiver to replace federal rules and regulations of Medicaid with their own on the last full day of the George W. Bush administration. Although it does not create a block grant, the waiver does establish a spending maximum for Medicaid in that state in exchange for considerable administrative autonomy. As a result, Rhode Island has seen considerable savings from such reforms as requiring copayments and auditing health care providers. Arizona has operated under a waiver to administer Medicaid since 1982 and the state could pursue an expanded waiver that includes:
    a. *Establish and enforce meaningful copayments.* Federal law allows a $1 copayment for regular office visits and a $5 copayment for emergency visits as established in 1965. However, since no one can be denied service for lack of the copayment, they are rarely collected. Other states should follow Rhode Island's lead and mandate copayments. Adults receiving free health care should be asked to shoulder some portion, however small, of their own costs.
    b. *Lifetime limits for standard services.* Except for catastrophic health needs due to accidents or other unexpected events, Medicaid recipients should be expected to eventually take care of their own health costs. For physically and mentally able individuals above the age of 18, a maximum number of years of personal benefits should be written into the law. Medicaid should be a temporary safety net, not a permanent entitlement.
    c. *Move to a voucher/HSA Medicaid system.* In order to encourage Medicaid recipients' help in saving the state money, the program could be converted into something similar to an HSA. In a set-up like this, recipients would be given a set dollar amount in their government accounts (exceptions would be made for catastrophic events); and to encourage cost savings, they would be able to spend unused health care money on education and job training services.

If you have any questions about these recommendations, or if you would like to discuss them in greater detail, please feel free to contact either of us at any time:

Dr. Byron Schlomach
bschlomach@goldwaterinstitute.org
(602) 462-5000 ext. 232

Christina Sandefur
csandefur@goldwaterinstitute.org
(602) 462-5000 ext. 271

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500 East Coronado Rd., Phoenix, AZ 85004 | Phone (602) 462-5000 | Fax (602) 256-7045 | www.goldwaterinstitute.org