Oklahoma's Amended Lawsuit & Health Care Exchanges
"The Patient Protection and Affordable Care Act"
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■ On Jan. 21, 2011, Attorney General Pruitt filed a lawsuit against the Affordable Care Act in The United States District Court for the Eastern District of Oklahoma on behalf of the State of Oklahoma. The lawsuit challenged the constitutionality of the individual mandate as provided in the health care act under the Commerce Clause in the U.S. Constitution.

- Oklahoma became the 28th state to challenge the Act, the most states to ever challenge the constitutionality of a single federal law.

■ On June 28, the U.S. Supreme Court ruled the ACA's individual mandate was unconstitutional; the government could not force Americans to participate in commerce by buying health insurance. Essentially, the original individual mandate no longer exists.

- The Court did, however, rule the law could stand with a system that taxes or penalizes Americans and businesses for not purchasing or providing "affordable" "quality" health insurance. The Court ruled that this was authorized by Congress' Taxing Power.
- On a second point considered by the Court, the justices agreed with the states' challenge that the federal government could not "coerce" states to expand Medicaid. The ruling allowed states like Oklahoma to choose whether to expand Medicaid. On Nov. 19, 2012, Gov. Fallin chose not to expand Medicaid in Oklahoma under the ACA. This does not keep states from creating their own programs or expanding programs as needed to help lower income residents.
- The Court did not consider or rule on health care exchanges.

■ In May, the IRS finalized a rule that will allow the agency to collect the law's "employer mandate" assessment or penalty from businesses who do not comply with provisions of the law. This would apply to businesses with 50 or more employees. Under the Rule, the IRS would assess the penalty in all states, even though the ACA only provides for the penalty to be collected in states where a State Health Care Exchange has been established. Oklahoma did not adopt a State Health Care Exchange, so under the health care law, the IRS cannot collect the tax.

- The employer mandate has the potential to devastate Oklahoma employers who would be forced to pay a tax/penalty of $2,000 each for ALL of their employees after the first 30, even if just one employee qualifies for a tax credit or subsidy through an exchange. For example, if a company has 1,000 employees and one employee now qualifies for an exchange, the company would pay the $2,000 tax for that employee and for 970 other employees with a total penalty of $1.94 million.
- Before the IRS finalized the rule, they were made aware that the rule was inconsistent with the health care law.

■ On July 27, Attorney General Pruitt asked Judge Ronald White to lift the stay on Oklahoma's health care lawsuit in order for the State to amend its complaint.

■ On Sept. 19, General Pruitt filed an amended complaint against the ACA, challenging the IRS Rule. According to the complaint, Oklahoma businesses should not be subject to the law's penalty or tax (employer mandate) because the ACA only provides for the tax to be collected in states with a State Health Care Exchange – as opposed to a Federal Health Care Exchange. Congress wrote the law under the false assumption that most, if not all, states would create State Health Care Exchanges. That has not happened, forcing the IRS and the U.S. Department of Health and Human Services to attempt to fix Congress' miscalculation by "adjusting" the law.

■ The federal government's answer to the state lawsuit was filed Dec. 3.

■ Oklahoma filed its response to the motion to dismiss on Jan. 25, 2013.

■ Oral arguments on the government's motion to dismiss were held on June 20.

■ Judge White denied the federal government's motion to dismiss on Aug. 12.

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