

**Mr. Chairman, members of the committee. I'm Wayne Hoffman, executive director of the Idaho Freedom Foundation, a free market public policy education and research non-profit based in Boise.**

**As you can imagine, IFF opposes the creation of a government-run health insurance exchange, be it federal or state.**

I know some people have argued, prior to the passage of the health reform law, that state-operated exchanges are a good, free-market idea. But I join with my colleagues at state free market think tanks across the country, and national groups such as the Cato Institute, when I tell you that there is no such thing as a government-operated free market entity. It is an oxymoron. It just can't exist.

Now, for those who supported the creation of a state exchange, like the one that the Heritage Foundation supported, perhaps, perhaps there was a time when it was possible to create such an entity that was devoid of federal rules and regulations, that could be autonomous from federal requirements. But to quote Ed Haiselmaier from the Heritage Foundation, that ship has sailed.

Here is what Ed had to say last week: "Initially, while HHS was still deciding how to implement the legislation, a narrow window of opportunity existed for states to pursue a 'pushback' strategy of creating a restricted exchange and requiring it to contract with the state's Medicaid program and insurance department to perform the eligibility, enrollment, and insurance regulation functions that state lawmakers seek to retain control of. HHS effectively closed that window in its proposed exchange regulations issued in July. In particular, section 155.110, dealing with exchange contracting, specifies in subsection (b) that, 'To the extent that an Exchange establishes such

arrangements, the Exchange remains responsible for ensuring that all Federal requirements related to contracted functions are met.'

"The combined effect of these regulations and grant requirements are that a state would have to agree to surrender any last vestiges of meaningful control over how Obamacare is implemented. Thus, a state would now have no more real control over an exchange it set up than over one HHS established."

To be clear, it is my opinion and the opinion of others in the free market community that the state cannot create an exchange that is autonomous and independent from the federal government's regulations. Were Idaho to do so, the federal government would rule the state out of compliance, demand changes, and if those changes don't occur, the federal government will still step in and operate the exchange itself.

A state exchange created by the Legislature might have the superficial appearance of being "under Idaho control," but it is still very much a federal beast. At the same time, the creation of an exchange would give the appearance that the Legislature is accepting of the provisions of the federal health reform law. It lends credibility to the law and cements it in place even before the U.S. Supreme Court has had a chance to act on it. Additionally, it is well known that Congress provided funding to help states create the exchanges, but it didn't provide the funding for the federal government to create and operate exchanges. By accepting money for exchanges and putting the exchanges in place, it speeds up the process for implementing the health reform law unnecessarily and further entrenches a new entitlement that this country and this state simply cannot afford.

You should also be aware there is a fatal flaw in the health reform law that either Congress must fix or the states must help cover up.

Under the letter of the Obamacare law, participants in health insurance exchanges are supposed to be eligible for health insurance premium assistance via a tax credit. But that assistance is available to those who **“were enrolled through an exchange established by the state”** under the federal law.

The word “state” is important. The statute says nothing that would allow people enrolled in a federally-created exchange to participate in the program. If you enact an exchange, the law goes forward as if the error never happened. The Cato Institute's Michel Cannon says, "states thus have the collective power to deny the Obama administration the legal authority to dispense more than a half-trillion dollars in new entitlement spending, to expose the full cost of the law's mandates and government price controls, as well as to enforce the law's employer mandate — simply by not creating Exchanges."

You have the power to make Congress reconsider this law by not enacting it. You have the power to save taxpayers millions, and indeed, billions of dollars by not putting this law in place.

The state Legislature, should it decide to create a state exchange will merely be opting to implement the federal law that we are suing to block on constitutional grounds. Should the law be declared unconstitutional, and it just might, you will be locking in place portions of the law unnecessarily and for all time. I might also add, that the 2014 deadline associated with the exchanges are not a one-time first right of refusal type of deadline. In fact, according to HHS' rules, at any point in the future Idaho could still opt to create an exchange -- in 2016, 2020

and so on. There is no limitation on the state's decision in this regard. This is not the only point in time for Idaho to decide to get in or get out when it comes to an exchange. And, for the initial go-round, states have to demonstrate that the exchange can be "fully operational" by October 1, 2013. So there is still time **after** the U.S. Supreme Court is expected to rule on this issue, to act if the state chooses to do so.

By the way, I have been asked, could the state Legislature write a bill and condition its passage on the U.S. Supreme Court's action. In my opinion, the answer is no, because that would be an unconstitutional delegation of the Legislature's lawmaking authority to an entity outside the Legislature. You could no more condition passage of a bill on an action of the U.S. Supreme Court as you could the actions of Wyoming's governor.

And one other note with regard to exchanges in general. It's been suggested that Idaho and other states should "create" an online portal where people can shop for insurance online, as if that doesn't already exist. It does. EHealthInsurance.com is also exactly that kind of portal. And as far having a place for employees to buy their own health plans with their pre-tax dollars from their employers, that exists under the federal tax code. They're called "health reimbursement arrangements." As far as having small companies having the ability to pool and leverage for lower-cost health insurance, there are companies in the private sector, such as Boise's own Employers Resource that allows that to take place, too.

In other words, this creation of health insurance exchanges to somehow help the free market is not only unnecessary, it is duplicative of current law and free market conditions.

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You have asked "What provisions of state exchange do we support." The answer is, we support the Legislature getting out of the way and allowing the free market to operate. Where legal barriers exist to the operation of a privately-created and operated -- meaning non-governmental -- exchanges, the state remove those barriers. If there are legal restrictions on insurance products from multiple jurisdictions being displayed and accessed and purchased via a single portal, like Expedia, like Travelocity, those barriers should be removed, again, allowing the free market to operate.

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To your question, "what should Idaho avoid in an exchange: " Well, again, this is somewhat complicated by the 200 pages of rules HHS put out back in July. So, I will try and sum up what those rules entail. The rules contain the word "require" 628 times. It contains the word "shall" 22 times, the word "must" 439 times. As with Medicaid, the state must adopt an exchange plan, to be approved by HHS and every time you choose to alter that plan it must be approved by HHS. That means months of writing, waiting, negotiating, rewriting, reworking, and more waiting.

The state will also need to operate a call center to respond to requests for assistance. The call center shall have a toll free number and answer specific types of inquiries as required by federal regulations. The state will have to operate a website with very detailed instructions for how the website operates, including features that make the site useful to people with disabilities and who don't speak English. The state would have to conduct outreach and education "to encourage participation."

The state would have to ensure qualified health plans comply with marketing practices and rout out those marketing practice that "have the effect of discouraging enrollment of individuals. The state would have to identify "deceptive marketing practices by all QHP insurers and their officials, agents and representatives." You would have to monitor insurance carriers to make sure sick people are not mistreated, avoided or dumped.

The state would have to guarantee that appropriate funding exists for ongoing operations beyond January 2015, including the charging of assessments and fees to insurers, use of general fund revenues and provider taxes.

Regarding data collected by the exchange, here is what HHS requires, from its own proposed rule summary: "Each exchange will need to obtain applicants' personally identifiable information, such as names, social security numbers, addresses, dates of birth, tax returns and other financial information."

But most importantly ... Idaho should avoid fooling itself into believing that it can create a limited exchange that will be just enough to escape federal oversight. This is known as the Utah plan. You've heard how Utah created an exchange prior to the creation of the health reform law. Today, there are enormous pressures on Utah lawmakers to take their current exchange and to upend it so that it complies with the federal health law. If Utah's Legislature doesn't act, it too, will be ruled out of compliance and the federal government will come in and set up its own exchange. This should not be surprising to anyone.

Thomas Jefferson pointed out "The natural progress of things is for liberty to yield and government to gain ground." What you put in place

in 2012 won't withstand internal and external forces pushing it to grow into something you never imagined. It is up to the state Legislature to stand firm, to reject the creation of a government insurance exchange and allow the health reform law to continue through the legal challenge in the U.S. Supreme Court. Doing otherwise undermines the state's legal efforts and undermines your efforts to restrain the size and scope of government, and to defend the freedoms of all Idahoans.