

Time to experiment

by *The San Diego Union-Tribune*

Seventy-five years ago, Supreme Court Justice Louis Brandeis famously declared that states should be "laboratories of democracy," free "to remold, through experimentation, our economic practices and institutions to meet changing social and economic needs." His insight has been confirmed repeatedly through the years, with innovative states fashioning smart new approaches to everything from welfare reform to pollution to privacy concerns.

Now, however, the United States is in the middle of an enormous policy debate over health care, and a well-meaning but overly restrictive federal law is making such state experimentation close to impossible. The Employee Retirement Income Security Act was passed in 1974, primarily to protect private pensions. But ERISA also included a provision coveted by large employers with uniform national benefit policies: a flat ban on states telling private firms what benefits they must provide.

The law has faced innumerable challenges, but its core pre-emptive power has remained intact. No state law mandating that employers offer benefits has survived a court challenge, and sweeping Supreme Court rulings citing ERISA's power are ubiquitous.

Mysteriously, this history has gone ignored in California, Illinois and Pennsylvania, where state leaders blithely push for employer health care mandates. In Sacramento, no one blinks at the fact that the Schwarzenegger administration can't cite a single independent attorney who thinks its proposed health plan is legal. In sharp contrast to Maryland Attorney General Douglas Gansler - who essentially told his state's leaders to give up on an employer mandate - California Attorney General Jerry Brown keeps his counsel to himself. The supposed iconoclast doesn't want to rock the boat.

Thankfully, however, at least one congressman - Rep. Rob Andrews, D-N.J., the chairman of the House Education and Labor Committee's health, employee, labor and pensions subcommittee - understands the ERISA barrier and wants to do something about it.

"The most creative thinking on what to do with the health insurance problem has come out of the states," Andrews said in a telephone interview. But "state legislatures have to tiptoe around a minefield of federal laws in order to do what they think is right. I want to make that less difficult."

Andrews thinks Congress should grant ERISA waivers to states that want to experiment; Hawaii secured such a waiver in 1983. He said he has received plenty of encouragement from a bipartisan assortment of California's congressional delegation - but heard not a word from the governor or other state leaders.

That's unfortunate. The United States is saddled with a health care system that's half-private, half-public, highly expensive and hugely frustrating. There has got to be a better way. Allowing states to try to fashion a more rational system that covers more people is an obvious first step toward identifying a better way.

For realizing this, Andrews deserves a nation's applause. Here's what clueless state leaders who ignore ERISA deserve: sneers and Bronx cheers.

Reprinted from The San Diego Union-Tribune.

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