

HOW MANDATED AUTO INSURANCE HELPS MAKE SENSE OF THE INDIVIDUAL MANDATE IN HEALTH REFORM

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The “individual mandate” is the most hotly debated part of the Affordable Care Act of 2010. Once this national health reform law is fully implemented after 2014, health insurance coverage will be available at a reasonable price to almost all Americans. At that point, according to the individual mandate rule, everyone will need to have or obtain coverage.

Then, as now, most people will have health insurance at work or through Medicare or Medicaid. Many others who have to purchase a private plan will get generous tax credits to reduce the cost – and there are exceptions for people who have religious objections or still cannot afford coverage. When all is said and done, only two out every 100 Americans will be required to buy a health insurance plan without significant help from the tax credits.

Even though not many people will be affected, conservative critics decry the mandate as unwonted “coercion” – yet few of those critics complain about state laws forcing all drivers to purchase auto insurance. Although legal mandates to buy auto insurance and health insurance are not exactly the same, they have enough similarities to allow us to think through why the health mandate makes sense. If mandated auto insurance is acceptable, mandated health coverage should be as well.

Different Details, but a Shared Logic

There are important differences between the mandates to obtain car insurance and the mandate to obtain health coverage. Auto insurance mandates are state laws that typically require all licensed drivers to purchase several types of coverage. Penalties apply to those who drive without insurance, including criminal penalties in some states. The health insurance mandate is a national rule, yet it will not apply to most people. After credits become available to make private insurance more affordable, a fine is supposed to be levied on uninsured people who refuse to buy coverage. But the fine is very small and it is not clear how it will be enforced. There are no criminal penalties.

Despite differences, the car insurance and health insurance mandates have important parallels:

- Both limit pure free choice, because they require people to insure against risks they may want to bear themselves – for example, by setting aside savings to pay for an illness or to cover costs of an accident.
- Both mandates spread risks – which is the whole point of insurance. It may turn out that premiums paid by others benefit me if I am in an auto accident or become ill. Or it may turn out that my premiums contribute to coverage for another person who suffers an illness or gets in an accident, or my premiums may contribute to coverage for someone else who is a victim

of a disease or injury. This is the essence of insurance, because we cannot know in advance who will suffer adverse events that are, overall, certainly going to occur.

- Both mandates are structured in a very American way: they allow private companies to compete to offer insurance policies, rather than just having government directly insure everyone. As companies compete in regulated markets, prices for consumers go down; that has happened for auto insurance and is expected to happen for individual health insurance, too.

Why Insurance Cannot be Voluntary

If insurance is a good thing, why can't we just leave it up to individuals to decide? The answer is that insurance can pool risks and hold costs down only if (almost) everyone has to be covered.

- Consider what would happen if auto liability insurance was not mandatory. Drivers who don't want to pay or feel they cannot afford coverage would go without. Some "safe drivers" might think they don't need insurance, but suffer bad luck on the road and cause crashes they cannot pay for. Many uninsured drivers could end up facing high bills. Dangerous drivers might tend to buy it for protection, while "safe drivers" might go without it. Insurance companies would pay for more accidents than they expected, so their prices would skyrocket.
- Similarly, without a health insurance mandate older people and those who know they are at high risk for disease would buy health insurance, while younger people and those who think their risks are low might not. "Adverse selection," as this scenario is called, quickly leads to higher costs for insurance companies; and when they raise their prices, fewer people purchase coverage. The overall situation gets steadily worse.

Is Driving a Free Choice?

Some critics believe that auto insurance mandates are less onerous than the health care mandate because driving is a matter of free choice. Former Massachusetts Governor Mitt Romney offered a rejoinder in a 2011 interview: "I know folks don't like ... mandates... And my conservative friends say, well, we don't have to have automobiles; well what state do you live in? Of course you have to have automobiles in this nation." In all but a handful of big cities with excellent public transportation, driving is essential to make a living and get to school, stores, and medical care. On any given day, over two-thirds of Americans aged fifteen and older are behind the wheel of a car for at least an hour. Auto insurance laws regulate a necessity (and recognize that driving is important even for high-risk drivers, who are included in special pools where they pay higher rates). Health reform also mandates coverage for all, because everyone needs health care sooner or later – and no one can be sure in advance how costly their care will prove to be.

Why Not Leave Health Insurance to the States?

Before Affordable Care passed in 2010, more and more Americans were losing health insurance or going without, and prices for coverage were going up. For decades, the states had tried and mostly failed to reverse these trends. Some states are too small, and state-level reformers are limited because citizens move around and employers and insurance companies operate across state lines. Only national rules – including the individual mandate – can make private health insurance work well and expand coverage to all American citizens and businesses.

This brief draws on Jennifer Wriggins, "Is the Health Insurance Individual Mandate 'Unprecedented?': The Case of Auto Insurance Mandates," University of Maine School of Law, April 2012; and *NFIB v. Sibelius*, 567 U.S. 1, 2012.