

Adding Clarity to Health Care Reform

By **RICHARD H. THALER**

NOW that House Republicans have voted to repeal health care reform, in full knowledge that their bill has no chance of passing in the Senate, much less avoiding a presidential veto, it is time for constructive action. There is an opportunity to improve health care and reduce uncertainty, a Republican mantra.

Perhaps the most unpopular feature of the health care legislation now in place is a provision that requires nearly everyone to buy insurance. It is known as the mandate, and it is the aspect of the bill that could end up before the [Supreme Court](#). In contrast, nearly everyone seems to approve of the provision ensuring that pre-existing medical conditions won't prevent you from finding affordable insurance, as well as the rule that prevents insurers from dropping you if you get sick.

Unfortunately, it is hard to have the popular features without some version of the mandate. A health insurance system cannot work unless most healthy people participate.

The major source of uncertainty arises not from the bill itself, but rather from the lawsuits filed by states that object to the mandate. The legal issue is subtle, given that states have long imposed mandates of various kinds themselves, including those requiring children to go to school or requiring drivers to have liability insurance. So the states are not questioning the legality of mandates but whether it is constitutional for the federal government to foist one on state governments.

The Supreme Court may make the ultimate decision in the next year or two. If it rules the mandate unconstitutional, the viability of the rest of the plan is not clear. Until the legal issues are settled, the status of health care reform will be uncertain.

In this light, here are three thoughts about constructive steps we might take now:

SEAMLESS ENROLLMENT

The first step is not really a substitute for mandates, but rather a supplement to whatever system we adopt, including the law as now written. The goal of having nearly everyone insured requires two steps. We have to get most people to enroll, and we have to keep them enrolled even if they move in and out of the labor market.

To address that second goal, we need to make it as easy as possible for people who lose jobs to remain insured. The setup I propose is that as soon as an employer submits a form notifying a laid-off worker that she has been dropped from its health insurance coverage, she would be automatically enrolled in a plan offered by her state insurance exchange, and directly billed at a rate that reflects her now-reduced income. Ideally, the default option would be an inexpensive, catastrophic policy that provides real insurance for major events.

Of course, she could choose another plan, or she could opt out of insurance altogether, but she would have to take some specific action in order to do so. And once she landed another job, she would be automatically enrolled in a plan from her new employer, again with the ability to opt out.

In a perfect world, all of this would be seamless, with one insurance ID number and no change in how claims are filed. If the [Internal Revenue Service](#) can keep track of you when you move from one job to another, the health care system should be able to do the same.

FORFEITURE, NOT FINES

After 2014, when the main components of health care reform kick in, the important question will be what happens to people who do not enroll initially, or do not stay enrolled. Under the current law, they will be fined an amount that depends on their income, payable when income taxes are filed. Fines are what differentiate a mandate from a suggestion.

But fines are not the only way to give people an incentive to join. One alternative is based on a proposal by Paul Starr, the Princeton sociologist and health care expert. Instead of facing a financial penalty for not buying health insurance, people would lose some of their insurance rights. For a stretch of time — say, five years — people would no longer have the right to buy insurance at rates subsidized by the government, nor would they be protected from price discrimination based on pre-existing conditions.

Under these rules, waiting until you become sick to buy insurance would have substantial risks. If the details are set properly, this arrangement could provide as big an incentive to join as a cash penalty. And because that cash penalty is imposed only when income taxes are due, the alternative plan may be easier to enforce.

MY “REAGAN PLAN”

If you don't like that idea, here's another. In 1984, President [Ronald Reagan](#) signed a bill encouraging all states to adopt a minimum drinking age of 21. To nudge states into going along, the plan said that any state that didn't join would have its highway funds cut by a certain percentage. Although Mr. Reagan initially had misgivings about the plan, he would later come to embrace it, saying that the harm caused by teenage drunken drivers was “bigger than the individual states.”

All of the states ended up complying, although some were reluctant — and South Dakota, in fact, sued. But in that case, the Supreme Court ruled 7 to 2 that the law was constitutional.

Here is how the Reagan plan could apply to health care: Adopt a new bill that says that if a state doesn't want to accept a mandate — or some alternative like the one described

above — it may opt out of health care reform. But a state that chooses this course would lose a percentage — or perhaps all — of the federal funds that the health care bill would funnel to state governments. In other words, states would be permitted to turn down the health care program, but they would then give up a share of the revenue, as well as other features of the law that are popular.

BOTH political parties could benefit from a civil discussion of these issues. By creating a viable alternative to mandates, Democrats could ensure that an adverse decision by the Supreme Court would not create legal chaos. Republicans could get a seat at the table if they engaged in a constructive way — and they might try to make progress on tort reform, which has the potential to help reduce health care costs.

As the recent tax compromise has shown, negotiations between the parties offer the potential for gains. In this situation, we can learn more from Ronald Reagan than from the slogan popularized by his wife, Nancy. It is not always the best policy to “just say no.”

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