

In the Spotlight: Health Care Reform and the Individual Mandate

The signature achievement of the Affordable Care Act (ACA) is its dramatic expansion of health care coverage; when fully enacted, it is projected that another [32 million Americans](#) will be insured. Virtually everyone agrees that this improved access to care for the uninsured is a critical step towards improving the health care system, but the primary means by which ACA reaches that end – the individual mandate – is highly controversial and has sparked a polarizing national debate.

While [recent court rulings](#) and heated political rhetoric have cast some doubt about the future of the mandate, it will probably be many months before a final determination is made – likely by the U.S. Supreme Court. But until the Court says otherwise, the ACA is law and remains in full force, with the mandate to take effect on January 1, 2014.

Basics about the Individual Mandate

Starting in 2014, the Affordable Care Act requires that most individuals have a comprehensive health insurance policy or be faced with paying a penalty. This “individual responsibility requirement” is most commonly referred to as the ACA’s individual mandate. For the majority of Americans, the mandate will be a non-issue because they get insurance through an employer or government programs like Medicare or Medicaid. Millions more will benefit from generous federal subsidies to help pay for insurance. Certain exemptions to the mandate will exist for religious reasons, financial hardship and more but generally, those who are uninsured will face a choice: carry health insurance or pay a penalty levied by the federal government.

Penalty for not complying with the individual mandate:

- \$95 annually or 1% of an individual’s income, whichever is greater, in 2014 and rising to
- \$695 annually or 2.5% of an individual’s income, whichever is greater, in 2016 and thereafter

The Mandate as a Piece of the Puzzle

When it comes to health care reform, the individual mandate is just one piece of the puzzle – but it’s a critical piece, serving as the glue that holds the rest together. To grasp why the individual mandate is necessary for health care reform to work, one must also understand how it makes the insurance reforms required by the ACA possible. For example, among other things the new law requires that beginning in 2014, insurers:

- must accept every applicant in the individual market, regardless of their health status (called “Guarantee Issue”), and
- can no longer take health status into account when determining premiums (called “Community Rating”).

These concepts - taken together with the individual mandate and available federal subsidies - have been referred to as part of a “[three-legged stool](#)”, with most experts on both sides of the political aisle in agreement that *all* must be in place for the law to be effective. If the mandate is removed while insurers continue to be required to accept everyone regardless of their health status AND forbidden from using health history as a gauge for determining premiums, there would be little incentive for people to carry coverage at all times. Instead, people could:

- **avoid buying health insurance** (since they’re guaranteed the ability to purchase coverage later)
- **wait until they’re sick or injured** to purchase coverage (since they’ll be charged the same rate regardless)
- once they’re covered, **immediately utilize health care services** to treat the sickness or injury (where their costs would be spread to everyone else who’s already in the system), and then
- **quit their insurance plan** once they’re healthy again.

That's an example of what is known as 'adverse selection' – the tendency for people to buy insurance when they know they will need it and avoid buying when they don't – and it drives up premiums for everyone in the insurance pool. It's no different than allowing a person to buy homeowners insurance after their house has caught on fire.

History has shown that such problems are not theoretical; they have actually occurred when Guarantee Issue and Community Rating are implemented without an effective coverage requirement. Following Massachusetts' statewide health care reform legislation passed in 2006, it was widely reported that residents bought coverage for short periods and incurred high medical bills while they were covered, only to drop their coverage once they received the care they needed.

- One insurer, Harvard Pilgrim, discovered that approximately 40 percent of people who bought an individual plan in a 12-month period left after less than five months. While they had the coverage, they incurred an average \$2,400 in monthly medical bills, six times the plan's projections.ⁱ
- In 2009, Blue Cross and Blue Shield of Massachusetts (BCBSMA) had 936 people sign up for coverage for three months or less and each ran up claims of more than \$1,000 per month while in the plan. This is more than four times the average for consumers who buy coverage on their own and retain it in a normal fashion. The typical monthly premium for these short-term members was \$400, but their average claims exceeded \$2,200 per month. BCBSMA reports that the problem was even worse in 2008, and over those two years the figures suggest the price tag ran into the millions.ⁱⁱ

So there is precedent for this type of 'gaming the system' that must be avoided at the federal level.

Why the Penalty is Key

Starting in 2014, the penalty for not complying with the individual mandate will be \$95 annually or 1% of the individual's income, whichever is greater and rising in 2016 to \$695 annually or up to 2.5% of income, whichever is greater. But insurance coverage, even for a healthy person, costs far more than \$695 per year. A key concern among insurers and many policy experts is that without a stronger mandate – one with a penalty at least as expensive as the cost of coverage – healthy Americans will actually have an incentive to 'game the system' by ignoring the mandate and simply waiting until they are sick or injured to buy insurance, as outlined above.

BCBSNC Views

Blue Cross and Blue Shield of North Carolina has long supported a meaningful individual mandate as a solid means to achieve the improved access to insurance coverage of Guarantee Issue and Community Rating. BCBSNC believes that the individual mandate is sound policy given the Affordable Care Act's considerable insurance reforms, but it can only work with a stronger (and enforced) penalty for non-compliance. Without strengthening the penalty that is outlined by ACA, millions of healthy people will remain uninsured, and those who *are* insured – particularly those in the individual and small group markets – will experience dramatically higher premiums.

The Mandate and North Carolina

As of this writing, 26 [states are involved in legal challenges](#) regarding the implementation of the health care reform law – most on the basis of the individual mandate's constitutionality. Resolution isn't likely until mid to late 2012, when the Supreme Court is expected to hear the case. In February, the North Carolina General Assembly approved [HB 2](#), legislation which intended to block the individual mandate in North Carolina and require Attorney General Roy Cooper to defend the challenge in court.

On March 5, Governor Bev Perdue [vetoed HB 2](#) citing constitutional law, that it jeopardized the state's Medicaid and CHIP programs, and more. She was quoted as saying HB 2 was "...an ill conceived piece of legislation that's not good for the people of North Carolina". An effort to override the veto subsequently failed, but with gubernatorial and presidential elections on the horizon, the mandate – and the ACA as a whole – is bound to be a key plank in each party's 2012 campaign platform.

For More Information:

Healthcare.gov on Individual Responsibility: <http://www.healthcare.gov/glossary/i/individualresponsibility.html>

Center for American Progress on Mandate: http://www.americanprogress.org/issues/2011/02/gruber_mandate.html

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ⁱ The Wall Street Journal, "Mandated Health Insurance Squeezes Those in the Middle", 9/16/09

<http://online.wsj.com/article/SB125304790936413347.html#printMode>

ⁱⁱ The Boston Globe, April 4, 2010, http://www.boston.com/news/health/articles/2010/04/04/short_term_customers_boosting_health_costs/?page=1