



## Forget About the Mandate. Let's Fix Health Care

By John H. Cochrane *Jul 12, 2012 6:30 PM ET*

On June 28, the [Supreme Court](#) upheld President [Barack Obama](#)'s health-care law. Opponents and supporters are still sparring over whether its mandate is a tax. It's time to get over this debate. The mandate's mild penalty was never this law's central economic and policy flaw.

The legal distinctions among a mandate, a tax, a penalty, or a credit, and between federal and state powers, are important legally and constitutionally. But they are irrelevant in economic terms for this law.

To commentators who are apoplectic that the federal government is using taxes to nudge us to buy health insurance, I say this: Hello? The tax deduction for buying an electric car, or the mortgage-interest deduction for buying a house, is economically equivalent to a tax for not buying health insurance. Maybe all are bad, but did you really expect the Supreme Court to rule the mortgage-interest deduction unconstitutional in a case brought against the health-care law?

Let's stop playing lawyer and get back to economics and policy. Opponents: Return to articulating the disastrous economic and health-care effects of this law. And articulate better ways to solve the mess. Supporters: Try to make this Rube Goldberg contraption work. Good luck.

## Pre-existing Conditions

On the July 1 “Meet the Press,” House Minority Leader [Nancy Pelosi](#) said: “If you are a person who has a child with diabetes, no longer will they be discriminated against because of a pre-existing condition. If you’re a woman, no longer will you have to pay more. No longer will being a woman be a pre-existing medical condition,” and “if you are senior, you pay less for your [prescription drugs](#) and nothing for a preventative check.”

She added: “And for everybody, no more lifetime limits on the coverage.” And young people will be covered by their parents’ policies.

A message to opponents: If all you (OK, we) can marshal in response is that you don’t like the legalities of a \$1,000 penalty/tax for not buying [insurance \(S5MANH\)](#), we’re going to lose. And we should.

Let’s start with the obvious question: Who is going to pay for all this? Someone has to pay for every expanded benefit, whether through higher premiums, higher prices or higher taxes. And tapping “the rich,” reducing administrative costs or executive pay would just be a drop in the bucket.

The more important fact is that the law won’t work.

Health care is a complex service, in which each person’s needs are blurry, and the line between “need” and “want” blurrier still. Imagine if the government decreed that law firms, car-repair shops, or home contractors had to charge everyone the same price, and couldn’t turn anyone away. “House fix,” for example, would be \$1,000 per year, no matter how large the house or what shape it’s in. Why do we think this will work for medical services?

Health care will be rationed. Period. If we don't ration by price, we will ration directly.

The Patient Protection and Affordable Care Act is a bureaucratic nightmare. About 2,700 pages of law, 13,000 pages of regulations and counting, 180 boards, commissions and bureaus, according to one [media report](#).

It's an invitation to crony capitalism. Thousands of companies have already asked for, and won, exemptions. They had better be in the good graces of the [Department of Health](#) and Human Services.

Enough. There are plenty of analyses of all the ways this law won't work.

Not Enough

But one cannot complain without alternatives. "Repeal and replace?" OK, but with what? Pelosi's promises address serious concerns. It isn't enough to say "that costs too much," or "it should be unconstitutional."

Sensible alternatives exist. This need not be a choice between the Obamacare mess and the mess we had before.

Fix health care, not just health insurance. Where are the health-care equivalents of Southwest Airlines Co., [Wal-Mart Stores Inc. \(WMT\)](#) and Apple Inc. -- innovating, dramatically lowering costs and bringing everyday low prices to health care? They have been kept out of the market by anti-competitive regulation. As one small example, in my state of [Illinois](#), every new hospital, expansion of an existing facility or major equipment purchase

must obtain a “certificate of need” from a state board. “Need” explicitly means that it doesn’t undermine incumbents’ profits.

Insurance should be insurance, reserved for unpredictable and catastrophic expenses. Car insurance doesn’t pay for oil changes, and you shouldn’t pay for checkups through [health- insurance](#) premiums. Such insurance would be a lot cheaper, and more people would buy it.

Insurance should be individual, portable from job to job and state to state, and guaranteed renewable for people who get sick. That neatly solves the pre-existing-condition nightmare. Insurance companies would be happy to sell such coverage. The government stands in the way, by subsidizing employer-based group plans at the expense of individual insurance. (My “[Health status insurance](#)” proposal is one example among many that describe functional private health insurance.)

Cost control is achieved in only one way. Competition. Not price controls.

Innovation comes from competition, too, and from innovators’ ability to initially charge rich people more -- and their ability to pay it -- make great profits, and then commoditize. You cannot have innovation in a government cost- controlled system.

It takes courage these days to have any trust in markets, or for politicians to oppose handouts to voters. Without that courage, our health-care system, and our economy, will fall apart.

(John H. Cochrane, a professor of finance at the University of Chicago Booth School of Business, an adjunct scholar of the [Cato Institute](#) and a senior fellow of the [Hoover Institution](#), is a

contributor to [Business Class](#). He blogs as the “Grumpy Economist.” The opinions expressed are his own.)

Read more opinion online from [Bloomberg View](#). Subscribe to receive a [daily e-mail](#) highlighting new View editorials, columns and op-ed articles.

Today’s highlights: the editors on how bad the [Libor scandal](#) could get and on [Hillary Clinton’s visit to Egypt](#); [Jonathan Alter](#) on Republicans’ [stop-the-vote plan](#) in [Pennsylvania](#); Stephen L. Carter on our [national Lincoln obsession](#); William Pesek on [North Korea’s opening to the West](#); [Jonathan Weil](#) on the [Barclay’s Libor scandal](#); Frederic Block on how he [sentences federal criminals](#).

To contact the writer of this article: John H. Cochrane at [john.cochrane@chicagobooth.edu](mailto:john.cochrane@chicagobooth.edu).