No, Rubio’s plan does not include an individual mandate

James C. Capretta

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Michael Cannon of the Cato Institute believes that Senator Marco Rubio’s plan for health-care reform would be politically ruinous for those opposed to Obamacare. He urges conservatives to embrace his plan — for “Large HSAs,” as they are known — as being far preferable, analytically and politically.

Republican U.S. presidential candidate Marco Rubio speaks at a campaign rally on the eve of Super Tuesday in Oklahoma City, Oklahoma February 29, 2016. Reuters

His argument is so weak that one is tempted to ignore it entirely. On the other hand, as recent events have made clear, it is best not to underestimate the appeal of empty but provocative political slogans which are never challenged.

Cannon’s contention is that Senator Rubio wants to impose a stealth form of Obamacare’s individual mandate. Cannon makes this argument even though Senator Rubio has made it clear he wants to repeal all of Obamacare, most particularly its requirement that all Americans buy government-approved health insurance. Cannon argues that Rubio would reimpose the mandate by giving people a refundable tax credit that they could use to purchase health insurance. Because tax filers would get the credit only if they purchased a health-insurance plan, Cannon says those eligible for the credit would face a mandate: either buy health insurance or pay higher income taxes by forgoing the credit.

Cannon’s logic is absurd.

Senator Rubio is proposing to fix a longstanding problem in federal tax law. He wants to make sure that all Americans get a comparable tax break for health insurance, regardless of whether or not they get their insurance through their place of work. For many years, federal law conferred a generous tax break for health insurance only on employer-paid premiums, which are excluded from the taxable compensation of workers for both income- and payroll-tax purposes.

Obamacare's defenders would say that Obamacare fixed this problem by giving households credits that they can use when they buy insurance through the law's "exchanges." But the Obamacare credits are not connected in any way with the value of the tax benefit for employer-provided coverage, they are income-tested and thus phase out for middle-income families, and they can be used only to purchase heavily regulated plans.

Rubio's proposal would truly level the playing field by first getting rid of Obamacare and then giving Americans who buy insurance on their own, rather than through their place of work, a tax credit of roughly comparable value to the tax break conferred on an employer plan of average cost. No one would be required to do anything. But if someone enrolled in health insurance purchased on the individual market, they would be treated roughly equally with their neighbors who enroll in a job-based plan.

As Ryan Ellis, a tax expert, has already noted, Cannon's logic suggests that current federal law is imposing mandates on Americans to have children (the child tax credit), use day care (the child-care credit), take out a mortgage, and save for their retirement. It is doubtful that most Americans would see things this way. Rather, they would say federal tax law is providing some limited financial support to encourage home-buying and saving for a retirement, and some financial relief to families raising children. A federal tax credit for health insurance would be exactly like these other tax breaks.

Moreover, Cannon's own "solution," such as it is, fails his own test. He proposes to repeal the entirety of Obamacare and in its place increase the allowable contribution to Health Savings Accounts (hence "Large HSAs"). Americans who place savings into these accounts and then use the money in the accounts to purchase health insurance would enjoy a generous federal tax break, because the dollars used for the purchase would be excluded from income taxes. Households not wishing to buy health insurance would likely contribute less or perhaps nothing to their Large HSA, and thus would pay higher federal taxes. By Cannon's logic, the federal government would be "mandating" that these households buy health insurance. That's not true, of course, just as it isn't true to say that Rubio is forcing people to buy health insurance.

Cannon also suggests his plan would be more popular than Rubio's because it would transfer control over health-care resources from employers to workers. But he is not entirely clear on how, or why, this transfer would occur. That's because he doesn't like to dwell on an important feature of the plan, which is that the existing tax preference for employer-paid health care would be eliminated immediately. Workers would then be allowed, but not required, to choose to place some of their earnings in Large HSAs; but if an employer tried to pay health-insurance premiums for those workers, the premiums would count as taxable income to the employees.

Cannon implies that employer coverage would, or might, continue because some workers would, or might, want to use their HSA reserves to enroll in an employer plan. But it is far more likely that employers would drop their plans altogether because they would no longer have any ability to predict who among their employees would enroll in the plan they organize. The Cannon plan would thus almost certainly mean the quick demise of employer coverage for tens of millions of Americans.

It would also substantially increase the ranks of low-income households without health insurance. Cannon would repeal Obamacare, with its expensive premium credits and Medicaid expansion, and in its place . . . allow these households to spend their own money on health insurance. But, of course, these households have very little discretionary income, and certainly not several thousand dollars to set aside in an HSA.

And even if they did have some money to put into an HSA, they would get almost no tax advantage from setting their money aside in this way because, if they pay income taxes at all, they are in the lowest tax brackets. Excluding $10,000 from taxable income is worth much less to someone who pays a 10 percent tax than to someone paying 39.6 percent.

Tax credits would go a long way toward providing lower-income households with a tax break comparable to what middle-class and upper-middle-class workers enjoy with employer-sponsored insurance. The Rubio plan would thus make it possible for all households in the United States to enroll in health insurance — but no one would be required to do so.

Obamacare is now in its third year of full implementation. It will not be easy to repeal and replace under any circumstance, but it definitely won't happen if opponents of the law remain unable to coalesce around a reasonable replacement plan.

It is certainly a good idea to expand HSAs and make them available to more households. I worked with several colleagues throughout 2015 to develop a plan for improving health care that includes expanded enrollment in HSAs. But the plan also includes many other important features, including rules for addressing pre-existing conditions, and Medicare and Medicaid reform. Increasing the size of HSAs, by itself, does not come close to constituting a credible plan to replace Obamacare, much less one that will move U.S. health care toward a fully functioning marketplace.

Despite what Cannon says, Senator Rubio's embrace of tax credits for health insurance is a good sign. It shows he understands what it will take to actually dislodge Obamacare. Many other opponents of the law, including Representative Tom Price (R., Ga.), have come to the same conclusion he has and have embraced tax credits. They should continue to ignore Cannon's advice, which, if followed, would lead everyone down a dead end.