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## Yes, Marco Rubio's Obamacare Replacement Plan -- Tax Credits -- Is An Individual Mandate

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Conservatives who support Marco Rubio and/or health-insurance tax credits reacted angrily when I wrote that Rubio's proposal to replace Obamacare with a universal tax credit is an individual mandate. It's not the first time. In the *Manchester Union-Leader* last year, I explained why Rubio's tax credits are merely Obamacare-lite. In a forcefully worded blog post, Americans for Tax Reform's Ryan Ellis, with whom I usually get along famously, wrote, "Marco Rubio's Healthcare Plan Absolutely Does Not Contain An Individual Mandate."

My reasoning is simple. Say that Ellis and I are identical in all ways, except that I buy health insurance and he chooses to go uninsured. Under Obamacare's individual mandate, Ellis has to pay, say, \$2,000 more to the IRS than I do—the penalty Obamacare imposes on him for not to purchasing insurance. Under Rubio's tax credit, the same thing happens. If we are each eligible for a \$2,000 tax credit, then Ellis has to pay \$2,000 more to the IRS than I do, for the same reason: because he didn't purchase insurance.

Ellis' substantive response is that if Rubio's proposed health-insurance tax credit is a mandate, then "there is a government mandate to have kids (child tax credit), buy a house (mortgage interest deduction) and save for retirement (401(k) plans)." Ellis makes additional non-substantive points, including: tax credits cannot be an individual mandate, because he supports the former but opposes the latter; indeed, almost no one agrees with me; tax credits are Republican orthodoxy and "a standard feature of Obamacare replace plans across the board"; it is "irresponsible" to mislead the Republican base. Logically, none of those arguments have any bearing on the truth or falsity of my claim.

So let me focus on Ellis' substantive point by citing what another health- and tax-policy expert, John C. Goodman, has written about this question. As I note in my original piece, Goodman is the dean of conservative health policy wonks. Like Ellis, Goodman supports tax credits, but opposes a mandate. Yet throughout the years, Goodman has repeatedly described the two measures as "equivalent."

**Tax Breaks Equivalent to Penalties:** In 2005 Goodman wrote:

Any incentive system can be described in one of two ways: as a system that grants subsidies to those who insure and withholds them from those who do not; or as a system that penalizes the uninsured and refrains from penalizing the insured. Either description is valid, because a subsidy is simply the mirror image of a penalty.

In 2011, he wrote:

There is nothing that can be achieved with a mandate that can't be better achieved by a carefully designed system of tax subsidies.

I think the term “tax subsidy” is evil, but that's a conversation for another day.

**The Tax Exclusion:** Ellis argues that other tax preferences aren't mandates, therefore health-insurance tax credits aren't either. But have a look at what Goodman has written about the biggest tax preference in the federal tax code: the exclusion for employer-paid health insurance premiums.

In his latest book, published in 2015, Goodman writes:

The only practical way to enforce a mandate is with a fine. But if a fine is all we need, we do not need a mandate. We need only a system that fines people who do not purchase health insurance.

In fact, the income tax has long provided such a “fine.” Middle-income families who have employer-provided health insurance (as opposed to higher wages) receive a generous tax break. The flip side of that tax break is a penalty: People who don't have employer-provided insurance pay higher taxes.

In 2005, he wrote:

A system that fines people who are uninsured *ipso facto* is indistinguishable from a system that subsidizes those who insure, the subsidy being the absence of the fine. That is the system already in place...

Instead of describing the current system as one that subsidizes employer-provided insurance, it could, with equal validity, be described as one that penalizes the lack of employer-provided insurance...

Under the current system the uninsured pay higher taxes because they do not enjoy the tax relief given to those who have employer-provided insurance. These higher taxes are a “fine” for being uninsured.

In 2010, Goodman called this tax “an appropriate penalty for being uninsured.”

It seems odd to think of the mortgage-interest deduction as a *mandate* to obtain housing by borrowing money to purchase a home, if only because who has proposed or ever would propose something so silly. But ask yourself: if the government were to impose a mandate requiring you to buy a house with a mortgage, what would that mandate look like? It would look a lot like the mortgage-interest deduction, where either you buy a house with a mortgage, or you pay more money to the government.

**Tax Credits:** As far back as 1992, Goodman explained that “under a system of refundable tax credits...People who choose not to purchase health insurance would automatically pay higher taxes (the amount of the credit).”

In 2001, he wrote:

Since we have a social interest in encouraging people to have health insurance, we should subsidize its purchase — say, with tax credits. The penalty for not being insured would be the absence of the subsidy...And, since a fine is a penalty, the absence of the penalty is a subsidy to those who purchase insurance. A penalty/subsidy system, in other words, is all the leverage that is needed or desired.

And finally, in a discussion with me at a Cato Institute event in 2015, Goodman acknowledged that a tax credit is indeed a mandate:

If you want to call my tax credit a financial mandate, I'm fine with that. The flip side of a subsidy is always a penalty. If you don't take advantage of the subsidy, then you will pay a penalty.

This was no slip of the tongue, either. It is actually Goodman's edited version of his spoken remarks.

**Additional Obamacare-Like Features:** Rubio's tax-credit proposal has other features in common with Obamacare's individual mandate. Rubio's proposal would require the government to define what coverage qualifies you to receive the tax credit. It would therefore give the government as much power to force consumers to buy unwanted coverage (e.g., coverage for emergency contraception) as Obamacare's mandate does. Rubio's mandate would actually be more punitive than Obamacare's. There are so many exceptions to Obamacare's mandate that 90% of the uninsured are exempt. Those exemptions would disappear under Rubio's mandate. Under Obamacare's mandate the IRS cannot use fines, liens, or criminal penalties to enforce compliance. Under Rubio's mandate, they could use all these tools.

Rubio's tax credits further resemble Obamacare in that Obamacare also contains tax credits, and both credits involve a “refundable” portion that is actually government spending. Rubio's credits would therefore keep in place and indeed expand much of Obamacare's redistributionist spending, because Rubio would offer refundable tax credits to many more people.

**Conclusion:** At this point, you may be thinking, *Okay, tax credits and mandates have similar effects. But doesn't the fact that conservatives like Goodman and Ellis still support credits but oppose mandates mean there must be a difference between the two?* It's an excellent question. So far, no one has offered one.

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