

Re: Romney Urged Obama to Adopt the Individual Healthcare Mandate

By Mario Loyola

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[Andy](#), leaving to a side the constitutional issues, which are also essential to my mind, I'd like to point out something about Romneycare that's been missed in the debate so far. You say that Romney's 2009 "op-ed demonstrates that Mitt regarded Romneycare precisely as a model the [federal government](#) ought to adopt . . ." Your implied definition of "Romneycare" is wrong in one very important respect.

The history behind the 2006 Massachusetts health reform ("Romneycare," properly so-called) is crucial. After the Clinton [health reform effort](#) failed in the early-1990s, eight states adopted sweeping health reform efforts of their own based on the disastrous scheme of "guaranteed issue" — in which private health insurers are required to insure all comers. These reforms typically also included limitations on co-pays, limits on how much more you could charge the elderly than the young for the same insurance coverage, etc., and required comprehensive coverage. The health reforms generally allowed private insurers to exclude those with pre-existing conditions, but in practice that did not solve the free-rider problem (healthy people waiting until they get sick to buy health insurance under the "guaranteed issue" scheme).

The results were disastrous. In most cases private insurers were largely driven out of the individual-insurance market (i.e., the market outside group plans) and in several states the reforms were fully repealed within just a few years. Richard Epstein, Ilya Shapiro, and I go into all of this in more detail in [our amicus brief for the Supreme Court](#) in the challenge to Obamacare. Our brief, one of three that Professor Epstein and I filed in the case, focuses on severability, and argues that the Court must understand the prior state experience in order to understand why Congress thought the individual mandate so vital to sustaining the core insurance "reforms" in Obamacare. (We argue that all the health-insurance reforms, [Medicaid expansion](#), and premium-support subsidies of Obamacare are inseparable from the mandate, and should be struck down along with it).

Massachusetts was one of the eight states that adopted "guaranteed issue" reforms (in 1996), and the results were terrible, as in the other states. The individual-insurance market shrank as it did elsewhere, driving up premiums up relentlessly. By the time [Governor Romney](#) undertook his health reform effort, the 1996 reforms were no longer

sustainable, and the liberals in his state naturally wanted to double down on what had created the disaster in the first place, as liberals seem genetically programmed to want to do whenever their policies go south.

Romney countered with a set of proposals meant to bring some measure of market principles and rationality back into the state's disastrous post-1996 health-care system. The key point is that "Romneycare" — to the extent that the current system in Massachusetts can be attributed to Governor Romney — cannot accurately be said to include the guaranteed issue and other reforms that produced the disaster there to begin with. In that sense, Governor Romney was not responsible for a comprehensive health-care scheme that is in any way comparable to Obamacare. He was trying to *fix* the problems created by a scheme that was comparable to Obamacare, namely the ill-advised 1996 reforms.

I firmly believe, as you do, and as I argued in yet another brief with Professor Epstein, that the individual mandate in Obamacare [exceeds the federal commerce power](#). But, while the individual mandate is the most obviously unconstitutional aspect of Obamacare, it is not, sad to say, the most potentially disastrous aspect of the law — not even close. That designation belongs to the Medicaid expansion and open-ended premium-support subsidies for everyone making up to 400 percent of the Federal Poverty Level. That massive new middle-class entitlement (400 percent FPL covers all but the top 20 percent of income earners), combined with the other guaranteed-issue, premium restrictions, and coverage requirements in the core health-insurance reforms of Obamacare, spells doom for the [federal budget](#), for our economy, and for health care as we know it.

The subsidy provisions in Obamacare are the stealth "single-payer" mechanism in the law — a huge step in the direction of socialized medicine. And I think you will agree that, on any fair reading of Governor Romney's 2009 op-ed, he opposed that scheme at state level and opposed it nationally.

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