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The *other* individual mandate

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In the continuing debate over the recently signed health care bill, the flash point is the individual mandate—the requirement that nearly all American adults purchase what the federal government determines is an adequate amount of personal health insurance. Even though this aspect of the bill had received widespread support in the business community and has been supported in the past by some Republicans, many Americans still see such a sweeping mandate as a bridge too far.

The individual mandate is at the heart of constitutional lawsuits being filed against Obamacare. They contend that the Constitution's granting of the federal government the power to "regulate interstate commerce" does not mean the government can force individuals to engage in commerce by purchasing insurance. As the Congressional Budget Office stated in 1994, the federal "government has never required people to buy any good or service as a condition of lawful residence in the United States."

The CBO might have added that very few state governments, in fact, have ever required their residents to purchase insurance covering illness or injury to themselves, resulting in a dearth of facts about how such mandates work in practice. Only one state—Massachusetts under Republican Gov. Mitt Romney—has ever enacted a law requiring that individuals purchase health insurance. And with that law being passed in 2006 and not being implemented until 2007, there is no long-term data about cost trends and quality of service from this mandate.

Supporters of an individual mandate for health insurance point to state requirements to purchase auto insurance, but this is an imperfect analogy for several reasons. As has been pointed out, this requirement only applies to car owners as a condition of the car being driven. But more importantly, most states only require that motorists buy insurance to cover the damage that their cars can do to others, not to themselves.

As Cato Institute health care policy director Michael Tanner points out, "Most states do not mandate that you carry insurance for your own injury or repair costs."

But interestingly, a small number of states actually do mandate that motorists purchase “personal injury protection” (PIP)—first-party insurance to cover their own health care costs from injuries sustained in car accidents. in looking at states with PIP requirements, some lessons can be drawn for predicting the effectiveness of individual health insurance mandates.

And the lessons drawn are mostly sobering ones for individual health mandates. In direct contrast to predictions of early proponents of these mandates, costs have soared and auto insurance premiums have shot up as a result.

First-party PIP insurance requirements originally had many of the same justifications of the individual mandates to buy health insurance. Having everyone in a pool in which the were required to buy the same basic package of benefits, advocates argued, would be cheaper than a patchwork system in which injury costs were paid for through a combination of an individual’s health and auto insurance and payments recovered through litigation against other drivers. On the latter point, PIP is often required in “no-fault” states that restrict auto accident lawsuits, but is required in other states as well.

But a comprehensive new monograph from the RAND Institute for Civil Justice finds that medical treatments for auto injuries in states with PIP mandates were “vastly more expensive than in other states.” From 1994 to 2006, inflation-adjusted PIP claim payments grew by 79 percent in no-fault states and 84 percent in other states that require first-party PIP coverage. The authors write that “these differences persist after adjusting for property-damage costs to account for variation in general inflation and accident prevalence across states.” By contrast, in states that didn’t mandate PIP, costs actually fell for similar injury claims. Mandatory PIP seems to suffer from some of the same problems from lack of choice and competition as health care does. And this directly affects costs.

This is especially true in Michigan. As a recent report, also by the RAND Institute, explains, even among states with PIP mandates, “Michigan is unique in requiring PIP coverage to be unlimited, providing a potentially generous source of reimbursement for medical expenses and lost wages in the event of an accident.”

But as the RAND report found, “this system of coverage has a price.” PIP costs per insured vehicle soared from $141 in 2000 to $277 in 2006, a 96 percent increase in just six short years. These costs are reflected in what Michigan motorists pay in premiums. In 2007, the average annual car insurance premium was $928 in Michigan, compared to $795 elsewhere in the U.S.

The lack of incentives for individuals to manage costs in Michigan and other states with mandated PIP has other negative effects as well. It may create perverse incentives for fraud.

Reviewing the stats, The RAND monograph authors found “an increase in the prevalence of suspicious claims” in many of these states over time. In New York, which mandates that motorists carry PIP with a high level of benefits, industry estimates calculated more than $229 million in fraudulent claims in 2009.

Fraud and other abuses must be specifically addressed, but there are some relatively simple solutions to inflated PIP costs. As with health insurance, the answers involve bringing consumers more competition and choice.

If states like Michigan and New York don’t want to get rid of PIP mandates altogether, the RAND report suggests that “other possibilities include allowing policyholders to limit their PIP coverage, select a wider range of PIP deductibles, or more easily designate auto insurers as secondary to health or disability insurers in claim handling. “

The good and the bad of state experiments in regulating auto insurance is something policymakers can learn from. In many ways, the auto insurance market is a shining example of what a competitive insurance market should look like. From Flo the Progessive Girl to the Geico Gecko, consumers are given a broad menu of choices and insurers underwrite different risk profiles (it helps that they call this discounting) without apology.

As Pulitzer Prize-winning columnist George Will stated in his address to the Conservative Political Action Conference, “Turn on your television at night. You are going to see competition all over your television screen

between Progressive automobile insurance, arguing with Geico automobile insurance, arguing with State Farm automobile insurance. … That is so obvious that even a caveman can understand it."

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