Commentary from the

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John McClaughry

A State Health Insurance Purchase Mandate?

The House and Senate health care committee chairs in Montpelier are pondering new adventures in health care policy for 2018. High on their list is a Vermont individual insurance mandate.

The mandate to purchase government-approved insurance has had a four-year run in Washington. It was made a cornerstone of Obamacare because older people are sicker than young people. If health insurance premiums are set according to an age group's risk of incurring medical expenses, the premiums for 60-year-olds will be as much as five times the premiums for 20-year-olds.

But when the small business and individual insurance pool is community rated (as Vermont's has been since 1993), all policy holders must be charged the same premium for the same coverage regardless of age. Thus young, healthy people will be made to pay far above their age group's expected medical expenses. Their (under 65) grandparents will pay far less than their age group's expenses.

Faced with far higher premium costs, many young healthy people simply "go bare" without insurance. Without the young, healthy people in the pool, the increasingly older (and sicker) pool will require ever rising premiums. This leads to the "death spiral." To prevent this, the government has to use compulsion to keep the young and healthy in and paying. That's the individual mandate.

Starting in 2019, Congress's repeal of the Obamacare individual mandate will relieve young healthy Vermonters of the threat of a tax of $695, or 2.5 percent of income, for not buying a Federal government-approved health plan.

Senator Claire Ayer and Rep. William Lippert do not want those people to drop their insurance. They are seriously considering shutting off this exit ramp for the young and healthy by creating a Vermont individual mandate to buy state-approved insurance. Then the young and healthy would continue subsidizing the premiums of the older and sicker.

This is "Robin Hood in Reverse." The State requires young people starting off in life, at the bottom rung of their lifetime income ladder, paying off education loans, planning to raise a family and buy a home, to subsidize people 40 years older, at the top of their lifetime earnings, their children grown and gone, and their mortgage paid off.

Whenever a proposal for a state purchase mandate raises its head, the first question one should ask is, "Or else what?"

Will the State levy a tax on you for not buying health insurance, like the now repealed ObamaCare provision? Will it take away an income tax exemption? Will it confiscate your income tax refund? Will it garnish your wages? Will it suspend your professional or business license? Your hunting and fishing license? Your driver's license?

Lippert notes that Massachusetts has had a state insurance mandate since 2007. The enforcement mechanism there is a denial of the personal income tax exemption. However the new Federal tax bill abolishes the personal exemptions used in computing Federal taxable income, which is used for Vermont income tax purposes. To deny those exemptions would require Vermont to create them, which would require major changes in how Vermont taxes income.

There is, however, a far better way than invoking state power to mandate that all Vermonters purchase insurance. It is to hold uninsured persons personally responsible for paying the medical bills they incur. We have long done this for "deadbeat dads" who won't make court-ordered child support payments.

Since 1994 the Ethan Allen Institute has advocated "income tax-based recapture for unpaid medical bills run up by persons who choose to spend their resources on things other than adequate health insurance. Mandating that people buy health insurance of the state's choice is an invasion of their freedom, but on the other hand, there is plenty of justification for dunning people who run up medical costs and expect others to cover them through higher premiums."

Under the personal responsibility alternative, the uninsured patient would be required to pay down an unpaid balance through income-tax payments year after year until it is retired.

This says to the person who prefers not to obtain insurance: "Your government will not fine you for failing to buy health insurance. But if you are unlucky enough to run up a big medical bill that you can't pay from your assets, you will be paying a piece of it off every year at tax time, possibly for the rest of your life. Are you sure you wouldn't prefer to protect against that by investing in a high-deductible insurance policy with limited mandates, with a cap on out-of-pocket payments, and with your own tax-free Health Savings Account?"

A state insurance purchase mandate is repugnant to individual liberty. Holding people responsible for the medical expenses they incur is not an invasion of liberty. The choice couldn't be more clear.

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Commentary from the
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Yet Another Attack On Liberty

The Vermont House has passed – with no apparent opposition – a bill (H.696) to mandate that "applicable individuals" purchase Obamacare health insurance or suffer penalties. "Applicable individuals" means every individual, not otherwise enrolled in employer sponsored insurance, or Medicare and Medicaid, excepting illegal aliens, persons incarcerated and persons claiming a religious exemption. The penalty would take effect in 2019.

The rationale for this new mandate is that, starting in 2019, Congress reduced to zero the tax penalty imposed by the Affordable Care Act (ObamaCare) for not choosing to buy ObamaCare-approved health insurance. Now, with no price to pay for not buying benefit-rich plans, some, perhaps many, young, healthy "applicable individuals" will choose not to do so.

Since 1991 state policy has been to load onto young people the medical expenses of their much older parents and grandparents. This is so despite the fact that it's a "reverse Robin Hood" requirement. Young people, just starting out with their careers, starting families, and perhaps paying off college debts and buying a home, are far less able to pay for their older, sicker, but richer parents and grandparents.

Legislators are worried that without the threat of an Obamacare-type penalty, some of these young, healthy people will escape the state's clutches. Hence the new mandate.

The bill declares the penalties, but doesn't dare to say what they'll be. It creates a working group to design the penalties, which will presumably be written into law next year.

Let's get real here. Just what penalty is the state going to impose on someone who doesn't buy overpriced state-approved health insurance? This has been addressed before. It was a central part of the Health Security Act, promoted but not enacted in the 2005 Legislature (At least the promoters of that bill had the courage to actually declare the penalties).

Here's what those penalties were to be: "Individuals who are not otherwise covered, and who refuse to participate in the Plan, will be sanctioned by some combination of denial of motor vehicle registration, drivers' license, homestead property tax exemption, hunting and fishing licenses, and enrollment in any school or college in the state."

Add to that a straight-out tax or fine, as in Obamacare, loss of your income tax exemption, confiscation of your income tax refund, garnishing of your wages, and maybe, for particularly defiant behavior, a trip to the correctional center, and you have the full panoply of state power over the liberty of Vermonters.

What is really scandalous is that this bill passed the House without opposition. The bill is now in the Senate Health and Welfare Committee, whose chairwoman, Sen. Claire Ayer, D-Addison, is on record in favor of the idea. Let's hope there are enough senators concerned about preserving our liberties to reject this latest Big Government assault weapon.

John McClaughry is vice president of the Ethan Allen Institute.

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What to Do with the Uninsured

Some Democrats would fine the uninsured. There is a better way. One version of Obamacare would fine anyone who failed to purchase insurance. Far better to impose a sanction that establishes the principle of personal responsibility.

John McClaughry

The version of Obamacare offered by the Senate Health, Education, Labor, and Pensions (HELP) Committee has a number of controversial provisions. Conspicuous among them is a proposed fine of as much as $1,000 a year levied on individuals who refuse to purchase health-insurance coverage as the bill mandates.

The antecedent of the individual mandate is the Massachusetts health-care reform of 2006. That measure -- spearheaded by Republican then-governor Mitt Romney, and lauded by Ted Kennedy, who is now the chairman of the HELP Committee -- contained a universal individual mandate to purchase state-approved insurance coverage. Or else what?

Romney had proposed a self-insurance option, whereby an individual could post a $10,000 bond to cover unanticipated medical costs. Liberal Democratic legislators rejected that option, leaving only a penalty for failure to enroll.

In 2008, Massachusetts started levying fines on non-compliers. The amount of the fine is half the cost of the premium of the cheapest approved plan in the person's region of the state, up to approximately $1,000 a year.

The Obama-Kennedy individual mandate is perhaps the first attempt by the federal government to require individuals to buy a particular product, or suffer a fine.

The problem this measure aims to solve is real: People incur medical expenses that exceed their ability to pay, leaving others (medical providers, insured patients, taxpayers, and so on) holding the bag. However, there is a better way to deal with this problem.

The operative principle should be personal responsibility. The responsible thing to do is to buy health insurance to cover most of the costs of illness or injury.

Unfortunately, state governments have made health insurance unaffordable for many consumers. They have done this by piling on costly mandates, requiring guaranteed issue (applicants cannot be turned down because of a pre-existing health condition), imposing community rating (everyone in a particular region pays the same premium, regardless of personal history), and outlawing low-cost policies that have high deductibles or offer only catastrophic coverage.

Faced with the steep cost of insurance, many people -- especially healthy young people -- choose to go without. Fine -- but if they then incur high medical expenses, they ought to accept the primary responsibility for paying for the services they have received.

Consider this proposal: If an uninsured person incurs medical expenses and leaves an unpaid balance, the provider must try for 90 days to collect. At that point the unpaid balance is posted to an account in the patient's name, managed for the government by a credit-card company. Each year the account manager reports to the patient his or her balance, on the equivalent of an IRS 1099 form. When preparing that year's taxes, the individual must include a stated fraction of that amount in his or her gross income. (The same result could be achieved with an inverse tax credit.)

The fraction reported would be graduated according to the patient's income and the amount of the balance due. For a high-income taxpayer with a low account balance, the amount subject to tax the first year might be 100 percent of the balance. For a taxpayer with minimal income, the balance would carry over undiminished to the following year.

Thus the uninsured patient would be required to pay off the unpaid balance via income- tax payments year after year until it is retired. Whether the account balance would be adjusted upward annually to match the depreciation of the dollar, whether interest would be charged on the average balance, whether the IRS would have a claim on a decedent's estate for the unpaid balance, and whether such liabilities would survive bankruptcy are questions for policy makers to decide. A further question is how much of the tax payment collected the government would deduct to cover administrative costs before remitting the remainder to the providers who weren't paid for their services.

In sum, the proposal says to the person who prefers not to obtain insurance: "Your government will not fine you for failing to buy health insurance. But if you are unlucky enough to run up a big medical bill that you can't pay from your assets, you will be paying a piece of it off every year at tax time, possibly for the rest of your life. Are you sure you wouldn't prefer to invest in a high-deductible insurance policy with limited mandates, with a cap on out-of-pocket payments, and with your own tax-free Health Savings Account?"

It will be objected that it might be years -- if ever -- before an ordinary individual could pay off a large hospital bill through annual income-tax payments. That's true. But the proposal at least fixes the economic responsibility for paying for services received upon the person benefiting from the services, and it sets up a virtually effort-free mechanism for paying.

To the extent the government returns the tax collections from this provision to the unpaid providers, the proposal will also reduce the otherwise unavoidable cost shift to insured patients, via higher premiums.

This plan is a clear conceptual alternative to the government forcing every citizen to buy government-approved insurance. The uninsured patient will be spared an oppressive government mandate to buy coverage. But the patient will know that if he or she suddenly requires expensive medical care, the consequence of having failed to enroll in suitable coverage will be reduced after-tax income. That will emphasize that the unpaid bill remains the patient's responsibility, not society's.

No scheme is perfect. If expenses are incurred, somebody has to bear the burden. But by obviating the argument for an illiberal individual mandate, such an income-tax-based recapture plan has a lot to recommend it.

-- John McClaughry is president of the Ethan Allen Institute in Vermont.

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Health insurance mandate a step backward for Vermont health care

By Meg Hansen VHCF

"If a mandate was the solution, we could solve homelessness by mandating everybody buy a house," then-Democratic presidential candidate Barack Obama quipped in a 2008 critique of his opponent Hillary Clinton's health care plan to force everyone to purchase insurance or pay a noncompliance penalty. Six months into his presidency, however, the individual mandate became integral to the Patient Protection and Affordable Care Act (ACA), and Obama's stance evolved to "Everybody must do their part."

Last December, when the Tax Cuts and Jobs Act eliminated the mandate (an aspect of ACA or Obamacare unpopular with two-thirds of the public), a number of Democrat-controlled state legislatures, eager to show up D.C., sought to resurrect it at the state level. On May 28, Republican Governor Phil Scott signed House Bill 696, requiring all Vermonters to buy health insurance or endure the consequences (details of which will be decided in 2019).

Obamacare architect and MIT economics professor Jonathan Gruber (who famously attributed ACA's success in Congress to the "stupidity of the American voter") analogized the individual mandate to one part of a "three-legged stool." The other two components entail prohibiting insurers from raising premiums or denying coverage to Americans with pre-existing medical conditions, and providing subsidies to make insurance affordable.

Beginning in 2014, insurance firms could no longer charge premiums based on an individual's health status. Rates for say, Clara with a chronic illness like COPD, needing frequent and costly medical care, could not exceed that of Jim in good health. As a result, Jim (likely younger) would need to pay high premiums disproportionate to his minimal use of medical services, motivating him to leave the insurance market.

The individual mandate was designed to prevent the latter, or "stabilize" the insurance exchange in politically correct terms, so that insurers could maintain a wide pool of low-risk, high premium payers like Jim to subsidize the medical costs incurred by the chronically ill like Clara. Referring to this argument, proponents of the Vermont mandate like Rep. Anne Donahue, Republican vice chair of the House Health Care Committee, maintain that imposing an individual mandate is integral to paying for those with pre-existing conditions. She is wrong.

Chris Pope of the Manhattan Institute explained that ACA subsidy provisions (for which 85 percent of persons on the exchange qualify) finance the insurance expenses of low-income Americans and those with pre-existing conditions, whereas the now-eliminated mandate concentrated these costs on a niche demographic. Lower-middle income employer-based health insurance, such as small business owners and those juggling multiple part-time jobs, disproportionately paid the price. According to a Vermont Joint Fiscal Office report, 78.4 percent of Vermonters that paid individual mandate penalties for the 2015 tax year (total of $6.1 million) made an annual income between $10,000 and $50,000.

Obamacare offered exemptions from the penalty for varying reasons like low income and religious affiliation. Individuals with a household income between 100-400 percent of the Federal Poverty Level received a hardship exemption, provided they bought insurance through a government marketplace. Low-to-middle income Americans did not qualify for this exemption (or Medicaid). For example, a young couple making $65,000 per year would be ineligible, and could be fined up to $1,390 for saving money and thus remaining uninsured.

This mandatory cross-subsidization set up an anti-competitive and inequitable system that attempted to pay for the expensive, long-term medical care of persons with chronic conditions by taxing those that could not afford health insurance. When premiums and out-of-pocket costs (i.e. deductibles, copayments, and coinsurance) vastly exceed the mandate penalty, many forgo coverage. The 2014 Vermont Household Health Insurance Survey shows that Vermonters aged 25-34 years formed the largest uninsured group at 11.0 percent (5.1 percent between 35-44 years and 4.6 percent of the 18-24 age cohort also did not have health insurance). Some could argue that younger Americans do not purchase insurance because they are healthy, but a 2016 Harris Poll indicates that increasingly they cannot afford it.

Economic factors like astonishing student loan debt have set up Millennials to become the first American generation to fare worse financially than their parents. We are lagging behind predecessors in achieving milestones such as buying homes, having children, and saving for retirement. Why, then, are the Vermont mandate's Democrat sponsors, all the politicians that voted in its favor, and Gov. Scott compelling young Vermonters to purchase unaffordable insurance? As Rep. Warren Van Wyck, one of the sixteen House Republicans to oppose H.696 remarked, "I thought we were trying to attract young people to the state."

The U.S. Supreme Court upheld the constitutionality of the individual mandate in 2012 for it functions as a tax and hence, falls under Congress' power to tax citizens. At present, Gov. Scott and Majority Democrats are embroiled in a budget standoff, playing out over a special session, because he refuses to raise taxes on Vermonters. Yet, he enacted the mandate - a health tax - into law with nary a peep of resistance.

The Scott Administration contends that this mandate will keep the number of uninsured Vermonters low, citing Congressional Budget Office data that thirteen million will "lose" insurance by 2027 as a result of the federal mandate repeal. First, recent studies demonstrate that the federal individual mandate had no discernible impact on the proportion of uninsured Americans. Second, the dysfunctional and coercive mandate ravaged American contract law of mutual assent. In its absence, millions of Americans may voluntarily choose not to buy a commodity.

Don't we have the right to make our own life decisions? Montpelier says no. Our political class finds the clarion call of collective responsibility more seductive than personal liberty. Green Mountain Care Board chairman Kevin Mullin (a former Rutland Republican senator) stressed that everyone needs to contribute - except the mandate adds to Obamacare's inequities by demanding more from some than others. (Note that adults under the age of twenty-six may remain on their parents' insurance plans, and thus the healthiest category from higher income strata do not participate in the exchange).

Indeed, cost-effective alternatives to an individual mandate exist. (A) Provide more choice in the form of slimmed down plans with low premiums for catastrophic coverage, which would incentivize the young and healthy to remain in the insurance pool. (B) Create separate and efficient high-risk pools through which greater subsidies could be focused toward tailored medical care (e.g. preventive services) for low income Americans suffering from major chronic illnesses. Maine operates a successful invisible high-risk pool, launched in 2011, which should serve as a model for tending to society's neediest without arbitrarily taxing some and depriving all of the freedom to choose.

To borrow from a 2008 Obama campaign mailer, "Punishing families who can't afford health care to begin with just doesn't make sense."

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