



Unraveling Reform Would Leave Millions with Less Affordable Care

Human Costs Clearly Trump Unfounded Legal Concerns

By Karen Davenport and Sonia Sekhar March 29, 2010

President Barack Obama's signature is barely dry on the new health care reform law, yet a select group of attorneys general are already looking to unravel these reforms. Virginia Attorney General Ken Cuccinelli, citing Virginia's recently passed prohibition against requiring all Virginians to hold health coverage, filed a legal challenge against the new health reform law immediately after the March 23 signing ceremony at the White House. Another 13 attorneys general led by Florida Attorney General Bill McCollum also filed suit minutes after President Obama signed the Patient Protection and Affordable Care Act. These lawsuits would imperil new help with skyrocketing health care costs for up to one-third of the nonelderly residents in their states.

Cuccinelli argues that the law's requirement that all individuals hold health insurance is unconstitutional. Individuals and families can meet this requirement by enrolling—if eligible—in Medicaid or another public program, purchasing a policy through a health insurance exchange, or enrolling in coverage offered by an employer. The Virginia attorney general argues that the Constitution does not give Congress the power to enact this "individual mandate." Although legal scholars have already said there is no merit in this claim.

Court challenges: Coverage at risk

Proportion of non-elderly Americans likely to benefit from new help with coverage

	State	Non-elderly residents who will benefit from new help with coverage	Total non-elderly population	Percentage who will benefit from new help with coverage
1	Montana	286,671	821,000	34.9%
2	New Mexico	521,051	1,636,000	31.8%
3	Louisiana	1,237,028	3,969,000	31.2%
4	South Carolina	1,165,873	3,755,000	31.0%
5	Oregon	962,466	3,126,000	30.8%
6	Alaska	193,996	638,000	30.4%
7	Idaho	386,758	1,290,000	30.0%
8	Oklahoma	916,935	3,071,000	29.9%
9	West Virginia	458,355	1,549,000	29.6%
10	Arkansas	712,191	2,421,000	29.4%
11	Kentucky	1,082,777	3,682,000	29.4%
12	Mississippi	749,341	2,559,000	29.3%
13	North Carolina	2,276,886	7,794,000	29.2%
14	Florida	4,241,792	14,573,000	29.1%
15	Wyoming	124,613	446,000	27.9%
16	Alabama	1,074,512	3,861,000	27.8%
17	Texas	5,717,914	20,566,000	27.8%
18	North Dakota	148,773	539,000	27.6%
19	Hawaii	302,666	1,120,000	27.0%
20	South Dakota	176,607	666,000	26.5%
21	California	7,838,145	31,077,000	25.2%
22	Nevada	529,568	2,123,000	24.9%
23	Utah	556,702	2,244,000	24.8%
24	Georgia	2,001,908	8,097,000	24.7%
25	Washington	1,368,076	5,542,000	24.7%

McCollum and his fellow attorneys general also challenge the new health reform law, citing the individual mandate. They also argue that the new law creates an unconstitutional encroachment on state sovereignty and places an unprecedented burden on the states, violating the 10th Amendment. For example, they cite the fact that the new health reform law requires states to pay for a portion of costs related to expanded eligibility for Medicaid coverage beginning in 2017 and creates new state administrative responsibilities related to health insurance exchanges.

The attorneys general should look beyond the legal arguments and consider the human costs. The bill would provide more than 30 percent of South Carolinians under age 65, for example, with access to more affordable health coverage, either through new help with private health insurance premiums or other coverage provisions in the bill. These provisions include expanded eligibility for Medicaid coverage, a requirement that many employers offer coverage or pay a per-employee fine, and an improved insurance market that better enables small employers to offer, and continue to offer, health insurance coverage.

The bill would help Americans in every state. Thirty percent of Idahoans, 29 percent of Floridians, and almost 28 percent of Texans could receive direct help with their health insurance costs or other benefits of the new law. Should the attorneys general prevail in the courts—however unlikely this outcome may be—these state residents would be left to continue coping with rising health care costs and an unpredictable health insurance market without this assistance. These residents have already suffered through the disintegration of the nation’s health care system and have personally experienced the rising costs of health care. Health insurance premiums, for example, have more than doubled in the last decade and have risen three and a half times faster than wages during the same period.

This chart, based on data analysis by researchers at The Urban Institute, shows the proportion of residents in each state who will be eligible for Medicaid coverage or help with premium costs, or be otherwise likely to experience coverage improvements, when the new

State	Non-elderly residents who will benefit from new help with coverage	Total non-elderly population	Percentage who will benefit from new help with coverage
26 Nebraska	368,553	1,493,000	24.7%
27 Indiana	1,338,080	5,464,000	24.5%
28 Virginia	1,652,518	6,764,000	24.4%
29 Colorado	1,001,388	4,129,000	24.3%
30 Maine	276,707	1,147,000	24.1%
31 Missouri	1,216,388	5,053,000	24.1%
32 Illinois	2,635,343	10,980,000	24.0%
33 Ohio	2,327,249	9,905,000	23.5%
34 Kansas	554,900	2,374,000	23.4%
35 Rhode Island	211,980	936,000	22.6%
36 Wisconsin	1,089,769	4,835,000	22.5%
37 Tennessee	1,161,643	5,235,000	22.2%
38 Michigan	1,981,310	8,994,000	22.0%
39 New Hampshire	248,136	1,181,000	21.0%
40 D.C.	94,028	450,000	20.9%
41 Minnesota	953,470	4,614,000	20.7%
42 Arizona	1,074,037	5,204,000	20.6%
43 Pennsylvania	2,160,031	10,514,000	20.5%
44 New Jersey	1,440,277	7,276,000	19.8%
45 Maryland	967,443	4,899,000	19.7%
46 Delaware	135,989	729,000	18.7%
47 Vermont	104,000	558,000	18.6%
48 New York	2,980,749	16,268,000	18.3%
49 Connecticut	522,560	2,947,000	17.7%
50 Iowa	362,161	2,515,000	14.4%
51 Massachusetts	615,000	5,593,000	11.0%
National average	—	—	24.3%

■ States whose Attorneys General are challenging the new health reform law.

*Source: Linda Blumberg, “The Biggest Losers, Health Edition: Who Would Be Hurt the Most by a Failure to Enact Comprehensive Reforms?” (Washington: The Urban Institute, 2010), available at <http://www.urban.org/uploadedpdf/412037.pdf>; John Holahan and Linda Blumberg, “How Would States Be Affected by Health Reform?” (Washington: The Urban Institute, 2010), available at http://www.urban.org/UploadedPDF/412015_affected_by_health_reform.pdf.

health care law is fully implemented. The attorneys general who have filed constitutional challenges against health reform represent a disproportionate share of the states whose residents are most likely to receive help with health care costs.

Methodology

This analysis relies on data from recent [Urban Institute estimates](#) of the number of individuals in each state who would become eligible for Medicaid or subsidies to pay for coverage under health care reform. We identified from these figures three groups of nonelderly individuals who could gain or improve their insurance through coverage options under the new law, including expanded Medicaid eligibility, new opportunities for employer-sponsored coverage, and premium subsidies for private coverage in the exchange:

- Individuals with family incomes up to 133 percent of the federal poverty level who will qualify for the Medicaid eligibility expansion. Medicaid is probably the most affordable coverage option for this group, regardless of their current source of coverage—should they have coverage at all.
- Individuals with family incomes between 133 percent and 400 percent of the poverty level whose family members work for small firms, are self-employed, work part time, or are not attached to the workforce. Individuals who fall within this income range will qualify for premium subsidies if they do not have a source of employer-sponsored coverage. These individuals are the least likely to be offered coverage by an employer, or if they do have coverage, to have it in the nongroup market. They are therefore likely to gain coverage via the premium subsidies or gain more stable coverage through other policy changes such as insurance market reforms and the creation of the insurance exchange.
- Subsidy-eligible, uninsured individuals in families with large and mixed group employment to whom employers will either offer coverage because of the new employer coverage requirement, or who will use subsidies to buy coverage within the exchange.

To calculate the proportion of nonelderly state residents who benefit from new help with coverage, we added together the number of individuals in the above groups and divided the total by their respective nonelderly populations.

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