



UNINTENDED
CONSEQUENCES:
KENTUCKY'S EXPERIMENT
WITH HEALTH CARE OFFERS
LESSONS FOR NATION





KENTUCKY'S

EXPERIENCE WITH HEALTH CARE REFORM IN THE MID-1990S HOLDS IMPORTANT LESSONS FOR THE NATION AS THE U.S. SUPREME COURT PREPARES TO RULE ON THE CONSTITUTIONALITY OF THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT.

One key issue is whether the federal government can require individuals to purchase health insurance—and whether the major reforms in the law could work as Congress intended if the Court finds that Americans do not have to obtain coverage.

The Supreme Court is considering the Obama Administration's appeal of a ruling by the 11th U.S. Circuit Court of Appeals in Atlanta last summer finding this "individual mandate" provision to be constitutionally flawed. If the high court strips the coverage requirement but leaves the insurance market reforms intact, many experts predict that what is left of the law will not be workable.



This is because health insurance works best when costs are spread among a broader universe of people — young and old, healthy and sick. When the costs associated with the risk of becoming sick are more equally distributed, costs for everyone in that group are lower. If the high court strikes down the requirement that all Americans obtain coverage, experience shows many healthy people will opt out of health insurance and defer purchasing insurance until they are ill or injured. Since insurers will still be required to cover anyone who applies, regardless of health status or pre-existing conditions, the risk pool will be left with an imbalance in the ratio of sick people to healthy people.

Without the balance provided by a stable risk pool, costs will rise for everyone, which goes against the goals of the federal reform law. The escalating cost of premiums will lead more people to drop coverage, especially healthier individuals, causing further rate hikes for those who remain.

The potential for chaos in this scenario is great. If this sounds overly far-fetched or alarmist, it isn't. Certain states that attempted to reform their health insurance markets prior to federal action in 2010 experienced these very results, with a devastating impact on individuals, families and businesses.

Kentucky's attempts to reform health care nearly two decades ago provides a glimpse into what can happen. One big reason things went sour after passage of the state's Health Care Reform Act of 1994 was the enactment of insurance market reforms without a requirement that everyone obtain health insurance coverage. As a result, most of the state's health insurers left the market, and some of those that remained went out of business. Individuals' insurance premiums skyrocketed, in some cases over 100 percent. The public and business leaders raised a ruckus, political leaders felt the heat, and the law was quickly altered and, in many ways, undone.

“It was a catastrophe that put affordable coverage out of reach for many Kentuckians,” said Vickie Yates Brown, a prominent Kentucky attorney who has studied health care reform for 27 years and is past chair of the Health Law Section of the American Bar Association. “It’s not that I like mandates, because I don’t. But without them, the way the insurance reforms are set out in the federal Act, it too will be a catastrophe. There has to be something in place to make reforms workable.”

Mike Hammons served on the official governing body known as the Kentucky Health Policy Board during the early years of the state’s health care reforms. While he believes the Kentucky program was given too little time to work out the kinks and prove its value, he says the law’s design was also a major stumbling block for reform. Had Kentucky coupled insurance reforms with a coverage requirement, he said, “I think it would have worked, and more states would have done it.”

THE KENTUCKY LAW’S FATAL DESIGN: INSURANCE REFORMS WITHOUT A COVERAGE REQUIREMENT

Governor Brereton Jones, who served from 1991 to 1995, made health care the cornerstone of his administration. He had been concerned about health-care issues since having served on the

board of directors of the University of Kentucky Chandler Medical Center. Distressed by the number of poor people lacking access to good health care, he created the Health Care Access Foundation to match indigent patients with doctors who would treat them for no charge.

As governor, Jones appointed task forces to help draft comprehensive health-care reform legislation. It was Jones’ belief that universal coverage was critical, calling it “the only way to get control of spiraling health costs.” However, legislators balked at linking a mandate to the insurance market reforms, and he had to settle for insurance reforms without the coverage requirement. On April 15, 1994, the governor signed a modified reform bill, House Bill 250, into law.

The law established the Kentucky Health Policy Board to oversee the state’s multi-billion dollar health care system, including new insurance market reforms:

- **Guaranteed issue and renewability** — Individuals were guaranteed the ability to obtain health insurance despite their health status or preexisting conditions, and coverage could be renewed each year.
- **Guaranteed portability** — People were entitled to retain insurance even when they lost a job or got another one.
- **Modified community rating** — Premium costs were generally uniform across different segments of the community, despite differences in medical status.



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LAW SECTION OF THE AMERICAN BAR ASSOCIATION

In addition, the Commissioner of Insurance was given the authority to review insurance rates and reject “unreasonable increases.” The law also established a Health Purchasing Alliance in an attempt to pool consumers who could then, at least in theory, obtain better rates. Furthermore, the reforms included consumer education, standardized benefit plans and mandatory posting of charges by health care providers.

With the new law, Kentucky became one of the first states in the nation to undertake health care reforms on a broad scale. The reforms didn’t last long in their original form, however. What was supposed to improve access to insurance — and therefore improve access to high-quality health care — actually raised premiums, caused almost all of the insurance carriers to flee the state, angered health-care providers and, perhaps most important, failed to significantly reduce the number of uninsured.

Within months of the bill’s passage, problems quickly emerged and the reforms began to unravel, and the 1996 and 1998 legislatures made significant changes to the original law. The Kentucky Health Policy Board and the Health Purchasing Alliance were abolished, and modified community rating and guaranteed issue were revised significantly.

Through it all, the number of uninsured Kentuckians did not significantly decrease.

REAL-LIFE PROBLEMS

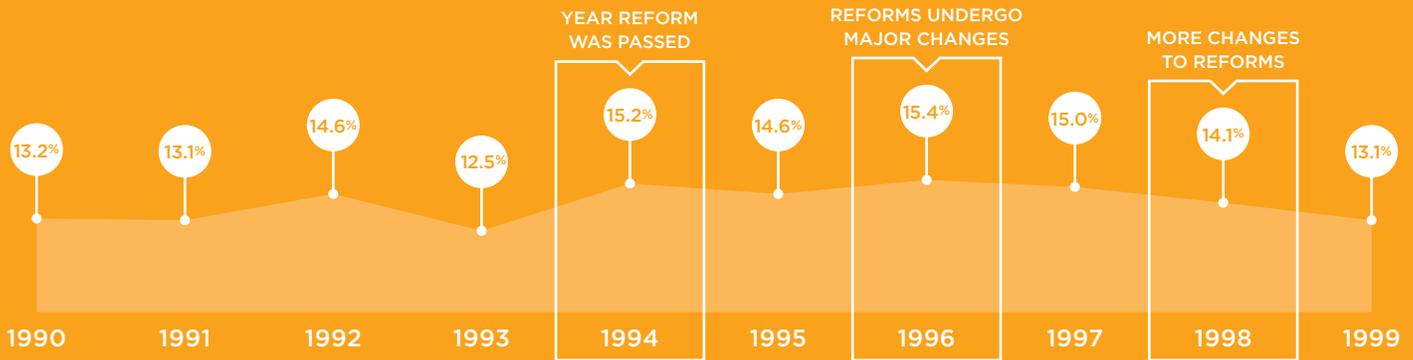
Kentucky’s reforms did nothing to benefit Clarence Knox of Louisville. He wanted to insure himself and his daughter, but premiums soared and he dropped insurance altogether. “I remember how much it went up,” he said recently. “At that time, if I had kept it I would have had to pay \$500 a month. Before that it was just under \$300. I had to drop the insurance and just go without. Thank goodness I was blessed and didn’t have any real emergency. I was taking a chance, but we just couldn’t afford it.”



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MIKE HAMMONS
SERVED ON THE KENTUCKY
HEALTH POLICY BOARD

Despite '90s Reforms, Number of Uninsured Kentuckians Held Steady



Source: U.S. Census Bureau

Clay Warnick, an editor for a weekly newspaper in Warsaw, Ky., was in his early 30s when Kentucky's reforms went into effect. He said the monthly premium for his individual health plan doubled. "What kind of health care reform increases health costs by 100 percent?" he said. "I didn't like it, but I bit the bullet and went ahead and bought it."

'KENTUCKY GOT OUT FRONT, AND NOBODY FOLLOWED'

With attempts in Washington, D.C. to reform health care nationally faltering in the early 1990s, Kentucky attracted considerable attention as it undertook its own initiative. But most of the reviews were not positive.

George Nichols III, who was Kentucky's Commissioner of Insurance at the time, acknowledged as much in a report to legislators in 1999.

With House Bill 250, Nichols, looking back, wrote, "Kentucky consumers would win some of the nation's best patient protections. The Commonwealth would become one of only eight states with guaranteed access to insurance

regardless of health. Kentucky became a national leader, but an unforeseen consequence was the state also became an island" — because dozens of health insurance companies left the market.

"We must remember that for every positive stride there was an unintended negative result," he said. "For example, legislative mandates requiring coverage for certain medical conditions increased premiums for all Kentuckians."

Nichols said Kentucky officials had expected President Clinton to win passage of his reform plan in Congress, allowing Kentucky "to be that much further ahead when that time came." But it didn't happen that way. "Kentucky got out front and nobody followed," he wrote. "HB 250 passed in April 1994. Clinton's national plan died in Congress in November 1994."

KENTUCKY'S REFORMS UNWORKABLE

The Kentucky Long-Term Policy Research Center, an independent research group established by the legislature (and decommissioned in 2010)

Carriers Offering Individual Health Insurance in Kentucky

43

1993

After enactment of reform,
that number dropped to

2

2000

Current number of
carriers offering individual
health insurance

5

2012

stated that the state's reform initiative was "generally considered to have fallen short" of goals. "The current state of the health insurance market in Kentucky suggests that the best legislative action in this area is no action," said a 1999 research center report called "What Next for Kentucky Health Care."

Vickie Yates Brown and three co-authors writing for the legal journal Northern Kentucky Law Review made similar points in their 2000 article, "Health Care Reform in Kentucky – Setting the Stage for the Twenty-First Century?"

"It is true that, due to the guaranteed issue provisions of HB 250, some people were able to purchase health care insurance for the first time," the article noted. "However, the cost of coverage for Kentuckians subject to modified community rated policies began to increase, often dramatically, which forced some small business and healthy individuals out of the market altogether."

Julia Field Costich, who served as senior health policy specialist and counsel for the Kentucky Health Policy Board, as well as executive director of its Health Purchasing Alliance, said she believes that coupling insurance market reforms with the mandate is critical. While there were other problems with Kentucky's reform, including the inherent difficulty of collecting monthly premiums from new insurance customers, the enactment of insurance reforms without a mandate was a problem in Kentucky – and it will be a problem at the federal level if the Supreme Court strips the coverage requirement from insurance reforms.

"I think the majority opinion is that loss of the individual mandate won't necessarily make the health insurance exchanges collapse, but it will increase the cost of coverage that is



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EDITOR, WEEKLY NEWSPAPER IN WARSAW, KY

offered, because it will remove healthy people, who feel as if they can live without insurance,” said Costich, who is now an associate professor in the University of Kentucky Department of Health Services Management and a co-author of the “What Next” report.

As Brown put it, “Kentucky has really been there and done that. This is a very important case, and I think the court will have to consider that, if you take away the mandates that are such an integral part of the insurance market reforms within the Act, then the whole thing may implode of its own weight.”



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CARY B. WILLIS, AUTHOR

AHIP engaged Cary B. Willis of New West LLC to develop this case study. A former newspaper reporter, Willis served as Director of Communications for the Kentucky Cabinet for Families and Children.

O'NEIL ARNOLD, HEADSHOT PHOTOGRAPHER