

Legal analysis: The health insurance mandate is constitutional

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The most politically charged feature of the health reform law is the mandate that legal residents have health insurance. Within weeks of the law's passage, twenty states had filed lawsuits charging that the mandate is unconstitutional because it gives the federal government more power than it actually has. The state lawsuits are widely expected to reach the Supreme Court next year. Legal scholar Lawrence O. Gostin writes that the health insurance mandate rests on firm legal ground.

Under the mandate, which goes into effect in 2014, the [federal government](#) can levy a tax penalty on most individuals who do not have health insurance. "The pivotal constitutional concern is that the government will penalize individuals for failing to buy health insurance - for 'doing nothing,'" writes Gostin in the [Hastings Center Report](#). Gostin is the Linda D. and Timothy J. O'Neill Professor of Global Health Law and Faculty Director of the O'Neil Institute for National and Global Health Law at Georgetown University Law Center.

Citing federal powers that apply to the health insurance mandate - the power to regulate interstate commerce and the power to tax - Gostin argues that the health insurance mandate is constitutional.

The power to regulate interstate commerce is relevant, he writes, because health care professionals, medications, medical equipment, and insurance claims routinely move across state lines. The federal government's power to tax is also relevant because the mandate is to be enforced through a federal tax, which will generate revenues to help

support health care reform.

"The act's tax penalty is clearly constitutional because it helps pay the costs of reform (such as Medicaid expansion, [health insurance](#) subsidies, and state insurance exchanges) and corrects market failures (such as preexisting condition exclusions)," Gostin writes. "The mandate, therefore, is essential for expanding access - the raison d'être of health care reform."

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