

The State of Health Reform in Virginia

by R. Brent Rawlings



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Virginia's role in the public discourse over health care reform is nothing short of enigmatic. Virginia was the first among many states to undertake efforts to oppose implementation of the federal health reform law, in particular the requirement that all Americans maintain health insurance coverage. Yet at the same time, its governor has taken a leadership role in developing state-level initiatives to reform the financing and delivery of health care in Virginia in addition to those included in the federal health reform law. This article provides an update on the status of legal challenges to the federal health reform law and explores Virginia's progress in implementing the federal law and its foray into developing its own solutions at the state level.

States Revolt Against the Individual Mandate

The Commonwealth of Virginia was the first state to file a lawsuit seeking to block the implementation of the federal health reform law, the Patient Protection and Affordable Care Act (PPACA).¹ Since March 23, 2010, the day when the Virginia case was filed (also the day when PPACA was signed into law by President Barack Obama), twenty-four other states have filed lawsuits challenging the constitutionality of PPACA.² Twenty-one of these lawsuits challenge PPACA's "individual mandate" provision. As of the writing of this article, fourteen of these lawsuits were still pending an initial decision or were subject to appeal involving dismissal on procedural issues.³

The "individual mandate" requires all U.S. residents to maintain minimum essential health care coverage, with limited exceptions, beginning January 1, 2014.⁴ If this coverage is not maintained, the individual is required to pay annually, as a federal tax liability on income tax returns, the greater of a flat dollar amount or a percentage of the individual's taxable income.⁵

A central component of the commonwealth's lawsuit and its standing to challenge the individual mandate as unconstitutional is the Virginia Health Care Freedom Act (VHCFA).^{vi} The law, which was approved by the General Assembly on March 10, 2010, and signed by the governor on March 24, 2010, states that:

No resident of this Commonwealth, regardless of whether he has or is eligible for health

insurance coverage under any policy or program provided by or through his employer, or a plan sponsored by the Commonwealth or the federal government, shall be required to obtain or maintain a policy of individual insurance coverage⁷

The commonwealth argued before Honorable Henry E. Hudson in the United States District Court for the Eastern District of Virginia, at Richmond, that there is a "collision" between the VHCFA and the individual mandate causing injury to state sovereignty over individuals and entities within its jurisdiction.⁸ The district court agreed that, although the VHCFA was only "declaratory [in] nature," it provided Virginia standing.⁹ Ultimately, the district concluded that the individual mandate "exceeds the constitutional boundaries of congressional power," severed the individual mandate provision from PPACA, and granted the commonwealth's motion for summary judgment.¹⁰

Courts to Decide Constitutionality of PPACA

On September 8, 2011, the U.S. Court of Appeals for the Fourth Circuit vacated the judgment and remanded the lawsuit back to the district court with instructions to dismiss the case for lack of subject-matter jurisdiction.¹¹ In rendering its decision, the Fourth Circuit held that "the mere existence of a state law like the VHCFA does not license a state to mount a judicial challenge to any federal statute with which the state law assertedly