



STATE OF FLORIDA

BILL McCOLLUM
ATTORNEY GENERAL

December 29, 2009

Dear Attorney General:


As you know, the federal health care legislation passed by the U.S. Senate and House of Representatives contains a penalty on people who do not purchase health insurance in accordance with the legislation. The legality of this individual mandate has been questioned, and I ask you to join me in launching a full review of the constitutionality of the individual mandate and potential legal options for States to pursue on behalf of their citizens should this mandate become law.

To address the costs of this new health care program, the legislation requires individuals and families to pay a penalty or tax if they do not obtain federally mandated health care insurance. This "living tax" raises serious concerns because it would impose penalties or levy taxes on a person who does nothing. Under principles of limited government, our Founding Fathers gave Congress certain enumerated powers that define the ways in which Congress can act. This structure was created to protect the individual freedoms of Americans and to preserve the rights of the States to act as the form of government closer to the people.

Serious doubts have been voiced regarding whether the individual mandate is grounded in one of Congress' enumerated powers. For example, if the individual mandate is treated as a fine on a person for conducting no activity at all, it may not fall within the scope of the U.S. Constitution's Commerce Clause. If the individual mandate is treated as a tax, the nature of that tax may limit how the revenue provision is viewed under the U.S. Constitution's Taxing Power.

Several of our colleagues are examining the constitutionality of a provision in the Senate health care bill regarding 100% federal Medicaid funding for a single state. I am joining that effort, and I ask you to consider joining with me in conducting a constitutional analysis of the individual mandate. I believe our analysis is needed in order to provide Congress our input, and more importantly to protect our States and citizens from a potentially unconstitutional federal mandate.

As Attorney General, there is nothing more important than the oath I took to protect the more than 18 million individuals who call Florida home, and I am committed to pursuing any legal action necessary to defend their Constitutional rights. Please feel free to contact me, or my Deputy Attorney General / Chief of Staff, Joe Jacquot, at 850-245-0184, and thank you for your consideration.

Sincerely,

Bill McCollum