

## What's at Stake in the Affordable Care Act: A Voter Guide

The Affordable Care Act (ACA) created important coverage avenues and consumer protections for people of all ages. From expanding access to affordable care to preventing discrimination based on health status, as well as improving Medicare's financial outlook, the ACA significantly strengthened the nation's health care infrastructure.

Despite these successes, in recent years the health law has been under attack in Congress, the states, and the courts. For 2020, voters should pay attention to candidates' statements about the ACA, including their stance on its elimination. Below are a few ways the ACA has changed health coverage and what's at stake if it is repealed or eliminated.

**Texas v US:** The ACA's future is uncertain, as the law's constitutionality is set to be considered by the U.S. Supreme Court in *California v. Texas* (known as *Texas v. U.S.* in the lower courts).<sup>1</sup> The appeal stems from a Texas district court decision that held (1) the ACA's individual mandate is unconstitutional because Congress reduced the penalty to zero in the 2017 tax bill; and (2) therefore, the entire ACA is invalid. The plaintiffs—a coalition of 18 Republican attorneys general—and the Trump administration maintain their support of the lawsuit and its goal of eliminating the entire ACA, including Medicaid expansion and pre-existing condition coverage, despite the risks of tearing away coverage during a pandemic. The Supreme Court will hear the case on November 10. A decision would then be issued in 2021.<sup>2</sup>

**Congressional Repeal:** Many policymakers still consider ACA repeal a priority. While recent attempts to repeal the law have failed, new congressional dynamics in 2021 could reinvigorate such efforts, with or without an acceptable replacement plan.

**Non-Compliant Plans:** The Trump Administration has greatly expanded the availability of two types of "junk" health insurance plans—Association Health Plans<sup>3</sup> and Short-Term Limited Duration Insurance.<sup>4</sup> These coverage options are not required to adhere to the ACA's consumer protections or coverage requirements. For example, these plans do not have to cover coronavirus testing, can charge higher premiums based on health status, impose annual or lifetime limits, exclude coverage for the essential health benefits, and, in the case of Short-Term Limited Duration Insurance, openly decline coverage for pre-existing conditions. Such skimpy benefits can allow for attractively low premium which can lure unsuspecting consumers who think

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<sup>1</sup> No. 19-840, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-840.html>. The case has been consolidated with *Texas v. California*, No. 19-1019, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-1019.html>.

<sup>2</sup> See Amici Curiae Brief of AARP, AARP Foundation, Center for Medicare Advocacy, and Justice In Aging Supporting Intervenor Defendants-Appellants Urging Reversal (April 1, 2020), <https://www.medicareadvocacy.org/wp-content/uploads/2019/04/Fifth-Circuit-FINAL-ACA-brief-4-1-2019.pdf>.

<sup>3</sup> Timothy S. Jost, "The Past and Future of Association Health Plans," The Commonwealth Fund (May 14, 2019), <https://www.commonwealthfund.org/blog/2019/past-future-association-health-plans>.

<sup>4</sup> Katie Keith, "Court Upholds Rule on Short-Term Plans," Health Affairs (July 20, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20190720.616648/full/>.

they are getting a bargain, only to discover later that they do not have real coverage.<sup>5</sup> Research confirms that consumers do not understand how little coverage and financial protection short-term insurance offers,<sup>6</sup> and that those who purchase these plans are at significant risk of facing substantial out-of-pocket costs should they need medical treatment.<sup>7</sup>

In addition to harming consumers, the proliferation of these plans may also endanger the ACA market. Many experts predict that because they can look like a good value, short-term plans might lure healthier people away from the more comprehensive coverage available through the marketplaces, leaving an older and sicker risk pool behind.<sup>8</sup> For many people who rely on the ACA's protections—particularly older adults and people with pre-existing conditions—switching to a short-term plan is not a viable option. They would have to remain in the ACA-compliant market, where costs would likely skyrocket.

**Closure of the Medicare Part D donut hole:** When Medicare Part D was created in 2006, it included a donut hole, or coverage gap, which beneficiaries fell into after their total drug costs reached a certain limit. While in this phase of the benefit, they were on the hook for the full cost of their medications. Once they reached another spending threshold, coverage would kick back in. This left many people with Medicare struggling to afford needed medications. The ACA phased in a solution, fully closing the donut hole in 2020.

**Medicaid Expansion:** The ACA gave states the option to expand their Medicaid programs to include coverage for low-income, non-elderly adults (ages 19-64) without dependent children. Prior to 2010, many of these individuals had no other source of coverage. Studies indicate the Medicaid expansion has led to historic coverage gains, improved enrollee health and financial security, and generated economic benefits for states and providers.<sup>9</sup>

**Age-based Discrimination:** The ACA prevents compliant plans from charging older consumers more than 3 times what younger people pay. Previously, there was no limit on this disparity; health insurance companies were typically free to set significantly higher and often cost-prohibitive premiums based on age, among other factors.

**Pre-existing Condition Protections, Community Rating, and Guaranteed Issue:** The ACA does not allow compliant plans to deny, limit, or charge people more for coverage based on a pre-existing condition. These protections are especially important for older adults who could be denied coverage or charged an unaffordable rate absent the ACA.<sup>10</sup> Legislative proposals that do away with the ACA and recent Executive

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<sup>5</sup> Linda J. Blumberg, et al., "Updated: The Potential Impact of Short-Term Limited Duration Policies on Insurance Coverage, Premiums, and Federal Spending," The Urban Institute (March 14, 2018), <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>.

<sup>6</sup> Kleimann Communication Group, "Report on Testing Consumer Understanding of a Short-Term Health Insurance Plan" (March 2019), <https://healthyfuturega.org/wp-content/uploads/2019/04/Release-Short-Term-PlanConsumer-Testing-Data-1.pdf>.

<sup>7</sup> Dane Hansen, et al., "The impact of short-term limited duration policy expansion on patients and the ACA individual market," Milliman Research Report (February 2020), <https://www.ils.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>.

<sup>8</sup> Linda J. Blumberg, et al., "Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending," Urban Institute (March 14, 2018), <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>.

<sup>9</sup> Larisa Antonisse, et al., "The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review," Kaiser Family Foundation (March 28, 2018), <https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-march-2018/>.

<sup>10</sup> ASPE Issue Brief, "Health Insurance Coverage for Americans with Pre-Existing Conditions: The Impact of the Affordable Care Act" (January 5, 2017): <https://aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf>.

Orders may pay lip-service to protecting pre-existing condition coverage, but policymakers have yet to release a detailed, viable plan for doing so. **Elimination of Lifetime and Annual Limits:** The ACA prevents compliant private insurance plans from placing annual or lifetime limits on coverage. This helps protect consumers from catastrophic health expenses and bankruptcy. Before the ACA, insurers could simply stop paying for an enrollee’s health care expenses after their costs reached a certain amount—often leaving the sickest patients responsible for extremely high costs.<sup>11</sup>

**Essential Health Benefits:** To help promote access to comprehensive coverage, the ACA requires compliant plans to cover, at a minimum, a set of 10 essential health benefits (EHB). Previously, consumers were often unable to find affordable coverage for many of these services—nearly 1 in 5 Americans lacked coverage for mental health care, for example, and almost 1 in 10 didn’t have any prescription drug coverage, despite 60% of the population needing at least one medication per year.<sup>12</sup>

**Access to Preventive Services:** Under the ACA’s EHB requirements, compliant insurance plans generally must cover a range of preventive health services without requiring any patient cost-sharing (co-payments, deductibles, or co-insurance). Importantly, the ACA also improved access to no-cost preventive services within Medicare and Medicaid, and added an Annual Wellness Visit with a primary care provider to the Medicare benefit. These changes—in particular when considered alongside the ACA’s coverage expansions—have effectively increased access to clinical preventive services and improved public health.<sup>13</sup>

**Nursing Home Protections:** The ACA includes critical quality of care-related requirements for nursing homes, substantially improving the Medicare benefit. As the COVID-19 public health emergency continues to show, such protections are more important than ever. According the Kaiser Family Foundation:

“The Affordable Care Act (ACA) is the first comprehensive legislation since the Nursing Home Reform Act, part of the Omnibus Budget Reconciliation Act of 1987 (OBRA ’87), to expand quality of care-related requirements for nursing homes that participate in Medicare and Medicaid and improve federal and state oversight and enforcement. Despite the 1987 reforms, beginning in 1997, the Government Accountability Office issued more than 20 reports documenting serious quality of care problems in nursing homes and inadequate enforcement of federal regulations to protect residents’ health, safety, and welfare. To help address these quality problems, the ACA incorporates the Nursing Home Transparency and Improvement Act of 2009, introduced because complex ownership, management, and financing structures were inhibiting regulators’ ability to hold providers accountable for compliance with federal requirements. The ACA also incorporates the Elder Justice Act and

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<sup>11</sup> Loren Adler, et al., “Health Insurance as assurance: The importance of Keeping the ACA’s limits on enrollee health costs,” USC-Brookings Schaeffer on Health Policy (January 17, 2017), <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2017/01/17/health-insurance-as-assurance-the-importance-of-keeping-the-acas-limits-on-enrollee-health-costs/>.

<sup>12</sup> Families USA, “10 Essential Health Benefits Insurance Plans Must Cover Under the Affordable Care Act” (February 9, 2018), <https://familiesusa.org/blog/10-essential-health-benefits-insurance-plans-must-cover>.

<sup>13</sup> Nadia Chait and Sherry Glied, “Promoting Prevention Under the Affordable Care Act,” Annual Review of Public Health (April 2018), [https://www.annualreviews.org/doi/full/10.1146/annurev-publhealth-040617-013534#\\_i7](https://www.annualreviews.org/doi/full/10.1146/annurev-publhealth-040617-013534#_i7).

the Patient Safety and Abuse Prevention Act, which include provisions to protect long-term care recipients from abuse and other crimes.”<sup>14</sup>

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<sup>14</sup> Kaiser Family Foundation, “Implementation of Affordable Care Act Provisions to Improve Nursing Home Transparency, Care Quality, and Abuse Prevention” (January 28, 2013), <https://www.kff.org/medicaid/report/implementation-of-affordable-care-act-provisions-to-improve-nursing-home-transparency-care-quality-and-abuse-prevention/>.