

Implications for Households If the Supreme Court Overturns the Affordable Care Act

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Introduction

The U.S. Supreme Court is set to hold hearings on *California v. Texas* in November, a case in which the plaintiffs hope the court will invalidate the Affordable Care Act (ACA) in its entirety. The Trump administration has filed briefs in support of the plaintiffs, a group of state attorneys general led by Texas. The plaintiffs contend that the ACA is unconstitutional in light of the elimination of the individual mandate penalties beginning in 2019. Another group of attorneys general, led by California's attorney general, argue that the ACA remains constitutional and should rightfully stay in effect, regardless of the elimination of the individual mandate penalties.

Should the plaintiffs win the case and the ACA be invalidated, the implications would be widespread and affect virtually every corner of the health care system.^{1,2} Just some of the ACA reforms that would be overturned in such a decision and would directly and adversely affect households' health care costs include the following:

- the private insurance marketplaces through which people can purchase individual and family coverage; many of these consumers are eligible for premium tax credits that significantly reduce premiums and out-of-pocket costs falling on households
- expansion of Medicaid eligibility to people with incomes up to 138 percent of the federal poverty level, an option taken up by 36 states and the District of Columbia so far

- substantial changes to the rules of operation for private, individually purchased insurance markets (including insurance sold outside the ACA marketplaces) and small employer markets, such as guaranteed issue of all insurance plans (regardless of an applicant's health status); minimum benefit standards; maximum out-of-pocket limits; prohibitions on exclusions of coverage for preexisting conditions; prohibitions on insurers varying insurance prices based on health status, gender, occupation, or factors other than limited age variation and pricing based on tobacco use; and limits on insurer charges for administrative costs and profits
- prohibitions of coverage rescissions and lifetime and annual dollar benefit limits in all insurance plans in the employer and individually purchased markets
- elimination of the Medicare prescription drug "donut hole," a change that significantly reduced out-of-pocket costs facing elderly adults with significant medication needs

Before the COVID-19 pandemic, Urban Institute researchers estimated that the number of uninsured people in the United States would increase by approximately 20 million should the court find for the plaintiffs in the case (referred to as *Texas v US* when it was before the lower courts), decreasing the federal investment in health care by \$135 billion

per year and increasing the demand for uncompensated care by more than 80 percent.³

Here, we provide an overview of how overturning the ACA would affect average people and illustrative families in different circumstances. Should the law be overturned and its myriad consumer protections eliminated, the associated increases in household costs would fall heavily on families with moderate and low incomes losing federal subsidies to offset their medical costs and people with significant health care needs (a single event or ongoing medical conditions).

Overview of People Most Likely to Experience the Greatest Ramifications if the ACA Is Overturned

As noted, a finding for the plaintiffs in *California v. Texas* would eliminate the ACA's health insurance marketplaces and the federal subsidies that lower premiums and out-of-pocket costs for enrollees with moderate and low incomes. The following statistics provide insight into some financial benefits average marketplace enrollees receive today, benefits they would lose if there is a finding for the plaintiffs in the case:⁴

- Approximately 5.8 million Americans enroll in individual (single adult) marketplace policies and receive federal help paying for their coverage. The average adult in this group receives \$5,550 in assistance each year through premium tax credits.

- Another 2.7 million Americans enroll in marketplace plans with their family members and receive federal subsidies to help pay their premiums. The average family among this group receives \$17,130 in help each year through premium tax credits.
- Marketplace enrollees with the lowest incomes can enroll in insurance plans with lower out-of-pocket costs (e.g., deductibles, co-insurance) when receiving medical care. These cost-sharing reduction plans lower each enrollee's out-of-pocket costs by more than \$1,000 on average.
- 9.1 percent have been diagnosed with diabetes, liver, or kidney conditions
- 5.9 percent have been diagnosed with cancer
- 52.2 percent have been diagnosed with at least one of the above conditions

Certain broader subgroups of nonelderly adults with nongroup insurance would face greater increases in insurance premiums without the ACA in place:

- Over half of nongroup insurance enrollees are ages 45 and older, and their premiums would likely increase substantially because of elimination of the ACA's limits on age rating.
- Of all nongroup enrollees, 23.3 percent are women of child-bearing age (19–44), and their premiums would likely increase substantially when rating insurance premiums by gender is again permitted, despite the fact that maternity benefits were routinely excluded in this market before the ACA required they be included.

Without the ACA's Medicaid eligibility expansion, families with low incomes in 37 states (including DC) will lose the comprehensive coverage they receive through the program:⁶

- People enrolled in Medicaid through the ACA's expansion have an average income of 115 percent of the federal poverty level,⁷ approximately \$30,000 for a family of four.
- The average health expenses incurred by each person enrolled in Medicaid through the expansion is about \$6,450 per year.⁸ Therefore, the typical married couple enrolled in Medicaid through the ACA's expansion would lose almost \$13,000 in health benefits should the ACA be overturned. With an income of 115 percent of the federal poverty level (about \$19,800 for a family of two), replacing such benefits would cost two-thirds of their income.⁹

Illustrative Families in Real-World Circumstances

What follows are examples of what would happen to illustrative families with varying circumstances if the ACA were overturned.

We provide these illustrative scenarios for hypothetical people using realistic information on premiums, subsidies, pre-ACA program eligibility, and the costs of medical conditions to demonstrate how invalidation of the ACA would affect the types of families who rely upon it.

Susan is a 33-year-old divorced mom of two young children. She works as a cashier at the local grocery store in Lansing, Michigan, but she is not offered health insurance. She makes \$9.65 per hour and works full time, so her gross annual income is \$19,300. At this income, her family lives below the federal poverty level. Because of the Affordable Care Act, not only are Susan's children eligible for and enrolled in Medicaid coverage, but Susan is, too. They all receive free, comprehensive insurance coverage with virtually no out-of-pocket costs under the program. If the ACA is invalidated by the Supreme Court, the children can stay enrolled in Medicaid, but Susan will lose her coverage. Before the ACA, even \$19,300 per year for a family of three (89 percent of the federal poverty level) was too much income to make a parent eligible for Medicaid in many states, including Michigan, where the cutoff was 64 percent of the federal poverty level. Susan can barely make ends meet as is, covering rent, food, clothing, and other needs for her and the children. Without the ACA's Medicaid expansion, she will undoubtedly be uninsured. The sole support for her children, Susan is vulnerable to getting seriously ill and losing the family's income if she cannot access necessary medical care.

Berta and John, both 55 years old, are relieved that their jobs in essential industries have kept them employed throughout the pandemic. John works in construction and Berta works as a bookkeeper for a small business in Charlotte, North Carolina. Combined, they make almost \$52,000 per year, or about three times the federal poverty level. They each have mild health conditions (John has some ongoing back issues and Berta has asthma), and they have taken advantage of subsidized ACA marketplace insurance coverage. Today, the ACA provides them with a tax credit of more than \$12,000 that covers 70 percent

However, people obtaining coverage through the individual market using federal subsidies would not be the only privately insured people affected by ACA repeal. Because the ACA reforms that provide access to adequate coverage regardless of health status would be overturned, even enrollees with higher incomes would have difficulty obtaining coverage at all or obtaining sufficient coverage to meet their medical needs when they occur. This is because guaranteed issue and minimum standards for benefits and out-of-pocket cost limits in these markets would be eliminated. In addition, the ACA's safety net that allows people to purchase comprehensive coverage if they lose their employer-based insurance would be eliminated. Today, the population enrolled in insurance coverage through nongroup markets is somewhat more likely to have health problems than the rest of the population below Medicare-eligible age.

National Health Interview Survey data from 2018 indicate the following about adults ages 19 to 64 enrolled in nongroup coverage:⁵

- 25.6 percent have been diagnosed with a cardiovascular condition (coronary heart disease, heart attack, stroke, high cholesterol, angina pectoris, or another heart condition)
- 22.8 percent have been diagnosed with hypertension
- 14.3 percent have been diagnosed with arthritis, rheumatoid arthritis, lupus, fibromyalgia, or gout
- 13.2 percent have been diagnosed with a lung condition (asthma, emphysema, chronic bronchitis)

of the cost of their health insurance. Without the ACA, not only would they lose that large amount of assistance, but they would find health insurance harder to get and higher priced. Without the ACA, North Carolina law (like that of most states) would once again allow insurers to deny coverage to applicants outright, even for mild health conditions. Before the ACA, coverage sold outside of employment often excluded coverage for prescription medications and other services, meaning the coverage sold probably wouldn't meet the couple's needs even if they could get it. In addition, the ACA limits how much older adults can be charged for health care compared with younger adults; without that rule, coverage is much more expensive for John and Berta.

Fred is a 35-year-old living in Milwaukee, Wisconsin. He worked for a big company for eight years but started his own business in 2016, once ACA marketplace insurance coverage made self-employment and guaranteed health insurance possible. He buys health insurance in the nongroup market even though his \$60,000 annual income is high enough that he does not qualify for any tax credits to help him pay for it. Fred has had Crohn's disease, a chronic condition, since he was a teen. He manages the condition well with biologic therapies, but they are pricey. Today, he pays \$451 per month (about \$5,400 per year) for standard marketplace coverage that includes benefits for all his health care needs. Should the ACA be invalidated, the state's rules (again, like those in most other states) mean insurers could reject his applications for coverage or charge him much more for coverage if they were willing to sell it to him. Even then, any coverage he could get would most likely have significant limits, such as excluding the specialty drugs his health depends upon. His financial exposure would be so great, he would be faced with choosing between his health and incurring crushing debt. Recent studies estimate the average annual cost of treating Crohn's disease (for which there is no cure) at about \$25,000 per year.¹⁰

Tim, a 24-year-old recent college graduate works part time at a start-up in Little Rock, Arkansas, that does not offer health insurance to its workers. Under the ACA, he would be covered by his

parents' employer-sponsored policy for two more years. This is a critical provision for him, because he has opioid use disorder (OUD) and anxiety and suffers occasional major depressive episodes. If the ACA is overturned, he would likely be denied insurance in a traditional nongroup insurance market because of his preexisting conditions. Even if he can obtain a policy, coverage in the nongroup market would revert to that available before the ACA, which, as a general rule, excludes benefits for mental health and substance use disorders entirely. Without the ACA's Medicaid expansion, he would be unlikely to be covered by public insurance, because he is not a parent and his part-time job pays him too much to qualify for Medicaid by pre-ACA eligibility rules. He gets treatment for OUD and his mental health conditions today, which is why he can work at all, but his prescription drug treatments and counseling would all cost between \$6,000 and \$14,000 per year if he had to pay out-of-pocket.¹¹ Like other patients with serious behavioral conditions, he also receives more physical medical care than those without behavioral conditions, about 6 times as much in fact.¹² After the ACA is declared null and void, Tim would pay an estimated \$18,000 to \$26,000¹³ to get the kinds of care he does now on his parents' employer-based insurance policy. His parents try to help him out in many ways, but that level of annual financial support is well out of reach given their moderate income.

Lilly, a 78-year-old woman with diabetes and congestive heart failure living in Athens, Georgia, has benefitted quite a bit from the ACA's closure of the Medicare drug benefit's donut hole, the range of out-of-pocket spending wherein the original drug benefit stopped lowering costs for beneficiaries. The donut hole in the benefit passed in 2003 was created to save the federal government money, so the 2010 ACA identified government savings and new revenues to pay for closing it over a 10-year period. Lilly's medications, even with the standalone Part D drug plan she buys to supplement her traditional (fee-for-service) Medicare coverage, cost her \$1,555 annually today.¹⁴ If the ACA is overturned, she will pay about \$2,270 per year out of pocket. This means she would have to come up with an additional \$715 out of pocket

annually, or \$59 per month, roughly the amount she pays now for a discount cell phone plan to stay connected with her great-granddaughters who live in Alabama and Texas.

Angelica and Antonio, a Scottsdale, Arizona, couple both age 36, are parents to two young children. Sara, the baby, now age 4, was born premature and had complications, including surgery, that kept her in the hospital's neonatal intensive care unit for six months after birth. Though Antonio has consistently had employer-sponsored insurance that covers the whole family, without the ACA, the costs associated with Sara's birth alone would have caused the couple to go bankrupt, because the expenses for her care would have easily surpassed the \$1 million lifetime limit on coverage that was very common before the ACA outlawed it in 2010. With the ACA in place, and given Sara's ongoing care needs, Angelica and Antonio still have higher out-of-pocket spending than the average family, but they can afford it with the insurance they have through Antonio's job. Actuaries had concluded that ending lifetime (and annual) limits on insurance coverage would not add much to premiums,¹⁵ but they were commonplace before the ACA prohibited them. The couple recognizes that should the ACA be overturned, any continuing health issues Sara may have throughout her life could easily impede her ability to get adequate, affordable insurance.

Conclusion

The ACA's reach is wide: Beyond providing financial help for people with low and moderate incomes to obtain insurance, the law provides myriad regulations that protect the ability of people with health problems to enroll in adequate and affordable insurance coverage. In addition, it has changed how insurers and health care providers do business and how the latter are reimbursed. And it has changed how state Medicaid programs operate, share costs with the federal government, and measure income. For these reasons, invalidating the ACA would have ramifications for the entirety of the health care system, and it would severely compromise access to necessary medical care for millions of Americans, a vulnerability highlighted by the consequences of a pandemic.

ENDNOTES

- 1 [Brief for Petitioner](#), California v. Texas, No. 19-840 (5th Cir. filed Feb. 14, 2020).
- 2 Stacey McMorro and John Holahan. A Supreme Court Ruling Finding the Affordable Care Act Unconstitutional Would Have Widespread Negative Implications. The Urban Institute. Forthcoming October 2020.
- 3 Banthin J, Blumberg LJ, Buettgens M, Holahan J, Pan CW, Wang R. Implications of the Fifth Circuit Court decision in *Texas v. United States*. Urban Institute. 2020. https://www.urban.org/research/publication/implications-fifth-circuit-court-decision-texas-v-united-states/view/full_report. Published December 19, 2019. Accessed September 24, 2020.
- 4 The statistics in the following bullets were estimated using the Urban Institute’s Health Insurance Policy Simulation Model (HIPSM), 2020. HIPSM is a microsimulation model that has been widely used to estimate the cost and coverage implications of health care reforms affecting the U.S. population below age 65.
- 5 The nongroup market refers to directly purchased private health insurance inside and outside the marketplace. Cardiovascular conditions include those ever diagnosed with coronary heart disease, angina pectoris, heart attack, stroke, high cholesterol, or other heart conditions. Lung conditions include those ever diagnosed with emphysema or asthma or diagnosed with chronic bronchitis in past 12 months. Diabetes, renal, and liver conditions include those ever diagnosed with diabetes, hepatitis, or chronic liver conditions and those with weak or failing kidneys or a liver condition in the past 12 months. Hypertension is for those ever diagnosed. Arthritis, rheumatoid arthritis, gout, lupus, or fibromyalgia are for those ever diagnosed. Cancer is for those ever diagnosed.
- 6 Two additional states, Missouri and Oklahoma, passed ballot initiatives in 2020 to expand Medicaid under the ACA. However, they have not yet implemented those expansions.
- 7 Estimate from the Urban Institute’s Health Insurance Policy Simulation Model.
- 8 Estimate from the Urban Institute’s Health Insurance Policy Simulation Model.
- 9 Such benefits would actually cost more than that to replace if the couple became uninsured, because health care providers charge Medicaid significantly lower prices than they do people who are uninsured.
- 10 Rao BB, Click BH, Koutroubakis IE, et al. The cost of Crohn’s disease: Varied healthcare expenditure patterns across distinct disease trajectories. *Inflammatory Bowel Diseases* 2017;23(1):107–15. <https://dx.doi.org/10.1097%2FIBD.0000000000000977>. Accessed September 24, 2020.
- 11 How much does opioid treatment cost? National Institute on Drug Abuse website. <https://www.drugabuse.gov/publications/research-reports/medications-to-treat-opioid-addiction/how-much-does-opioid-treatment-cost>. Published June 2018. Accessed September 24, 2020.
- 12 Davenport S, Gray TJ, Melek S. *How Do Individuals with Behavioral Health Conditions Contribute to Physical and Total Healthcare Spending?* Seattle: Milliman; 2020. <https://www.milliman.com/-/media/milliman/pdfs/articles/milliman-high-cost-patient-study-2020.ashx>. Accessed September 24, 2020.
- 13 See the [table](#) showing average health spending by age and gender in 2016 in How do health expenditures vary across the population? Henry J. Kaiser Family Foundation Health System Tracker website. <https://www.healthsystemtracker.org/chart-collection/health-expenditures-vary-across-population/#item-start>. Published January 16, 2019. Accessed September 24, 2020.
- 14 Estimates of prescription drug expenses in this example were produced using the Urban Institute’s Medicare simulation model, MCARE-SIM.
- 15 Kliff S. The Obamacare provision that saved thousands from bankruptcy. *Vox*. March 2, 2017. <https://www.vox.com/policy-and-politics/2017/2/15/14563182/obamacare-lifetime-limits-ban>. Accessed September 24, 2020.

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