





Getting Back to Basics on Health Care

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You can say one thing with certainty about health-care politics and the 2020 election: President Trump and Republicans still want to take away people's health insurance. If they get their way, millions of Americans would lose coverage under the Affordable Care Act and Medicaid, and many more would be stuck with skimpier health insurance.

That's a stark fact U.S. voters should keep in mind as the coronavirus spreads across the country and threatens to shut down much of our economy.

Democrats have fought against this in Congress, at the state level, and in the courts. The contrast between the two parties couldn't be clearer: Democrats want to make sure all Americans have health insurance, Republicans don't.

Getting everyone covered, and driving down health care costs, should be the focus of the health care debate in the fall – just as it was in 2018, when Democrats flipped 40 seats to take control of the House of Representatives. It's the right thing to do, and it aligns progressives with the sentiments of an overwhelming majority of Americans.

In a new survey of the key battleground states of Michigan, Wisconsin and Pennsylvania, the Progressive Policy Institute finds that health care is the top issue among all voters, the top issue for Democrats and independents, and the second highest concern for Republicans.¹

The poll also shows that voters in these states trust Democrats slightly more on health care than Republicans. However, it appears that public doubts over Medicare for All could be bringing down support and trust numbers for Democrats.

Voters overwhelmingly say (69-31%) they favor change that builds on the current health system rather than replacing it with "a single government-run plan."²

It is essential that Democrats shift the focus of the health care debate from left-wing purity tests back to the Republicans' multi-pronged campaign to roll back the ACA's coverage gains and protections for "pre-existing conditions."

The stakes are enormous. Here's what could happen if Trump wins re-election and Democrats lose their House majority:

1. More than 10 million Americans would lose access to the ACA's insurance exchanges and subsidies to purchase coverage;
2. Tens of millions of low-income Americans would be thrown off Medicaid;
3. Hundreds of millions would lose protection against "pre-existing medical conditions;" and,
4. Health care costs would rise more rapidly, making insurance more expensive.

Let's take a closer look at what the Trump administration and Republicans are doing:

ATTACKING THE ACA IN THE COURTS

The most immediate threat to Americans' ability to get health care is the court case *Texas v. United States*, which the Supreme Court will hear this fall. In the case, the Trump administration and state Republican attorneys general are arguing that the entire ACA should be thrown out. Their argument is absurd, and reeks of bad faith.

The background: In President Trump's first year in office, Republicans failed to repeal the ACA. However, they passed a repeal of the ACA's individual mandate tax penalty as part of their big 2017 tax cut. The mandate had been deemed constitutional in a 2012 Supreme Court decision written by Chief Justice Roberts because it was enforced by Congress's constitutionally prescribed taxing power.

University of Michigan Law Professor Nicholas Bagley describes what happened next:

A bunch of attorneys general in red states saw an opportunity. They realized that the penalty's elimination meant that the mandate didn't look like a tax anymore...the instruction to buy insurance must now be understood as an unconstitutional obligation. What's more—and this is the really audacious move—they argued that this zero-dollar, unenforceable mandate was so crucial to the operation of the Affordable Care Act that the whole law was now invalid.”³

The administration and Republicans argue that the now toothless individual mandate is actually more coercive and burdensome than it was when it actually cost a taxpayer money to go without insurance. They also claim that Congress, in repealing the tax penalty, also meant to get rid of the ACA's protections for people with pre-existing conditions, Medicaid expansion, and subsidies for people to buy insurance on exchanges when they can't get insurance through their employer.

In short, Republican lawyers argue that, shorn of its constitutional tax penalty, the entire ACA is unconstitutional. This would spell the death of a host of popular provisions: no-cost flu and other vaccines; — including maybe one day in the not so distant future a covid-19 vaccine — the ability of students to stay on their parent's

health insurance until they are 26; closing the “donut hole” in Medicare Part D drug coverage; requirements that fast food and chain restaurants say how many calories their food has; and hundreds of other smaller provisions that have been embedded into our health care system since the ACA was signed into law a decade ago.

Now, many Congressional Republican profess surprise that their vote to repeal the tax is being interpreted as a vote to repeal the ACA. Even Senator Mitch McConnell admits that “Every one of us was caught flat footed” by the argument.⁴ But that didn't stop a federal judge in Texas (appointed by George W. Bush) from buying the whole contorted legal theory, hook, line and sinker.

His decision, argues two legal scholars previously on opposing sides of past ACA court cases, “makes a mockery of the rule of law and basic principles of democracy...the deployment of judicial opinions employing questionable legal arguments to support a political agenda.”⁵

Two Republican judges on the court of appeals agreed with the Texas judge that the law was unconstitutional but sent the case back to Texas for further analysis. In the meantime, the Supreme Court has decided to step in and will hear the case in the fall, likely just before the November election.

The case, and its disingenuous arguments, are one example of the lengths Trump and the Republicans are willing to go to attack the law and the health care protections it provides.

It is also a clear example of where a Democratic president, a de-politicized Justice department, and a Democratic Congress would have an immediate impact. The decision by the Supreme Court is expected in June 2021. At that point, if the Supreme Court agrees with the Texas judge, the entire law will be gone and whoever controls the presidency and Congress will be the ones to pick up the pieces.

GUTTING THE ACA WITH EXECUTIVE ORDERS

Being in charge of administering the ACA's exchanges and Medicaid gives an administration the power to make a big impact on the success of those programs. While estimates vary, it's clear that the number of uninsured Americans dropped between 2013 and 2016, after passage of the ACA, and has ticked back up since Trump came into office. The Kaiser Family Foundation estimates "the number of uninsured dropped from more than 46.5 million in 2010 to fewer than 26.7 million in 2016." After the historic low in 2016, by 2018, "the number of uninsured increased to 27.9 million nonelderly individuals."⁶

While the exchange marketplaces have been stable, the administration has been raising new barriers to enrollment. The Center on Budget and Policy Priorities estimates they have "cut advertising by 90% and in-person consumer assistance by more than 80 percent; (and) shorten(ed) the open enrollment period in half."⁷

They have also implemented regulations increasing the availability of skimpy, short-term insurance plans. These plans, which can

now last up to 364 days (up from the Obama administration's 90-day limit) and can be renewed for up to two years, basically bring back the junk insurance products the ACA was designed to eliminate. Such plans don't have to cover the ACA's essential benefits (like maternity care, mental health care, prescription drugs, and even emergency care!). They also lack protections against discrimination for pre-existing conditions and can have lifetime limits on coverage.

Because they offer less (and worse) insurance, they can be cheaper than some plans on the insurance exchanges. They are aimed at enticing young and healthy people to leave the exchanges. This would drive up costs for those still in the exchanges and lead to lower levels of insurance enrollment overall.

EXECUTIVE ACTION AGAINST MEDICAID

The administration has undermined Medicaid through various executive actions and in conjunction with Republican governors and state legislatures. All of these efforts are intended to reduce the number of low-income Americans who can get health insurance.

The conundrum for Republicans is that the ACA's expansion of Medicaid to cover low-income adults is broadly popular. Recalcitrant red states face strong pressure from the public and health-care industry leaders to accept the federal government's generous financing terms – it covers roughly 90 percent of the cost of expanding Medicaid rolls.

As of the end of 2019, 36 states and the District of Columbia have expanded Medicaid and two more are considering it.⁸

Estimates are that since 2013, Medicaid enrollment has grown by close to 15 million, about 13 million of which have been in ACA expansion states. And 21 of these states saw increases in enrollment of at least 25 percent.⁹

So, Republicans have turned to a strategy that focuses on either blunting the reach of expansion or just generally limiting access to Medicaid.

Following the administration's lead, some states are moving to impose "work requirements" on Medicaid recipients — something the program has never had in its over 50 years of existence. The administration argues that because there is a correlation between employment and better health, work requirements can make people healthier. In actuality, supporting families with health insurance makes it easier for individuals to work. And certainly a more proven way to make people healthier is to make sure they have access to health care.

What the work requirements really do is help kick people off Medicaid by forcing beneficiaries to run through a bureaucratic gauntlet to prove they are working or are exempt from the requirements (because of disability or other factors).

Arkansas, the first state to implement work requirements, targeted them at adults age 30-49. Harvard researchers estimate that in just the first six months about 17,000 people were kicked off of Medicaid.¹⁰

That represents one in four people in the targeted population despite estimates that 97 percent of that population was likely exempt from the requirements. In that population, the percentage of uninsured grew from 10.5% in 2016 to 14.5% in 2018. This happened while Arkansas saw no increase in employment among the Medicaid population.¹¹

Researchers estimate that one-third of the people kicked off Medicaid didn't know about the requirements and half were unsure about whether they met the requirements.¹²

Even those who tried to report their work histories discovered that initial reporting was only allowed online. Yet state officials knew that a substantial percentage didn't have regular access to a computer. Once a phone line was made available, beneficiaries faced long call hold times. And this was a process Medicaid beneficiaries had to go through every month!

Achieving a reduction in government benefit spending by forcing beneficiaries to jump through bureaucratic hoops is a tried-and-true conservative strategy. It's especially effective when beneficiaries are lower-income.¹³

The work requirements are currently tied up in the courts. So far, most courts have held that they are impermissible given the goals and criteria within the Medicaid law, so in most cases they have been put on hold. Some states have backed away from work requirements for fear of being reversed by the courts.

However, their dubious legality did not keep the Trump administration from proposing nationwide work requirements in their 2021 budget proposal. The White House estimated the requirements would cut Medicaid spending by about \$150 billion over 10 years.

Another threat to Medicaid is the Trump administration's push to block grant Medicaid through executive action and waivers to the Medicaid statute.

Medicaid is a federal entitlement. That means the federal government distributes Medicaid dollars to states by paying a certain percentage of the cost of care for each Medicaid beneficiary.

States follow federal guidelines to determine who is eligible for the program. Thus even if new people join Medicaid or if health care costs rise, the federal contribution to the program automatically keeps pace.

For years, Republicans have been fighting to convert the Medicaid entitlement into a block grant. Under this approach, the federal government distributes a flat amount of Medicaid money to states. While the block grant allows states to use the money with more flexibility, there's no guarantee that it would keep pace with enrollment growth and increases in the cost of health care. Thus, analysis of the proposals by the Congressional Budget Office (CBO) and others consistently show that they would lead to less people getting insurance through Medicaid.

One such block grant proposal was included in the House Republican-passed bill to repeal and replace Obamacare in 2017. The CBO estimated the bill would cut Medicaid by \$840 billion with 14 million fewer people covered in the first 10 years after passage. Ultimately, such cuts could not pass the Senate at the time and were a big reason why that bill polled as the least-popular piece of legislation in at least three decades.¹⁴

Since it was unable to achieve block grants legislatively, the Trump administration has given states guidance on how to submit waivers that would allow them to get block grant funding. Like many of this administration's proposals, the legality of such a move is highly questionable and will likely be challenged in court. But it shows how determined Republicans are to reduce health care coverage for low-income individuals.

GOP LEGISLATIVE ATTACKS ON HEALTH COVERAGE

Were Trump to win reelection and Republicans to win back the House while holding their Senate majority, there would be nothing to stop the next Congress from wiping out the ACA altogether.

President Trump's budget calls for a cut of \$844 billion as part of "the president's health reform vision." It offers no details, but it's not hard to predict what that "vision" entails based on past White House budgets.

A cut of that magnitude would leave health-care spending in the last year of the budget's window at about the same level as if a law were passed to simply eliminate the ACA insurance subsidies and the Medicaid expansion.¹⁵

This amount of savings is also similar to prior Trump budget proposals for fiscal years 2019 and 2020. Those budgets explicitly adopted the health-care reform proposal initially introduced by Republican Senators Lindsay Graham and Bill Cassidy to "repeal and replace" the ACA in 2017. The Graham-Cassidy proposal also called for block granting both Medicaid and the ACA insurance subsidies. And it would do away with all of the private insurance protections from the ACA, including requirements to cover essential benefits and protections against discrimination for preexisting conditions. According to health care experts, the GOP bill would have stripped 30 million Americans of coverage over a decade.¹⁶

Although the GOP House passed a bill repealing the ACA, the Senate fell one vote short of following suit when the late Sen. John McCain cast a courageous vote against repeal in the summer of 2017. Although those votes came back to haunt GOP Congressional candidates in 2018, Trump and his party are still obsessed with killing Obamacare.

America's health care system is a work in progress. Progressives recognize that we must do more to control costs in public health care programs and in the private sector — especially the out-of-pocket costs from higher deductibles and prescription drugs prices many families face. We also must build on the ACA's significant coverage gains. For instance, there are still nearly five million people who could get coverage if all the states embraced Medicaid expansion. According to a recent study, that could save almost 6,000 lives annually.^{17,18}

In short, our health care system can be dramatically improved without a complete federal government takeover. PPI has suggested several big reforms that would drive medical prices down and move us to universal coverage.¹⁹

Democrats shouldn't back away from their own record of steady progress toward creating high-quality, affordable health coverage for all Americans. Tens of millions of Americans have received insurance through the ACA insurance exchanges and Medicaid expansions. Crucially, they've also won protection against being priced out of insurance markets by pre-existing health conditions. And as all that has happened, national health-care spending has slowed to the lowest level of growth relative to the economy since the 1970's, despite adding millions of newly insured.²⁰

These achievements are historic. But they remain under threat. Democrats should put defending them back in the center of the 2020 election debate.

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Founded in 1989, PPI started as the intellectual home of the New Democrats and earned a reputation as President Bill Clinton’s “idea mill.” Many of its mold-breaking ideas have been translated into public policy and law and have influenced international efforts to modernize progressive politics.

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