

Health Care

WILL THE AFFORDABLE CARE ACT SURVIVE?

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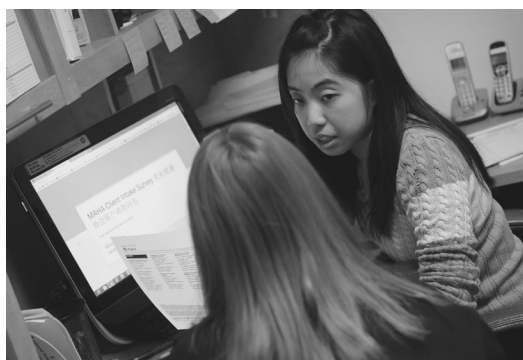
Eight years after passage of former President Barack Obama’s landmark health reform law, the Patient Protection and Affordable Care Act (ACA) continues to face significant political, legal and economic challenges. The ACA—dubbed “Obamacare”—has expanded access to health services to millions of Americans, cut the uninsured rate in half and spurred efforts to improve the quality of care. But its Republican critics say it is expensive, unconstitutional and harmful to consumers. With Congress in 2017 unable to agree on whether to repeal or replace the ACA, the Trump administration began taking a number of regulatory steps to kill the law. The outcome of the November midterm elections, health analysts say, is likely to play a big role in whether the ACA survives.

BY BARA VAIDA

Republican efforts to dismantle “Obamacare,” known formally as the Patient Protection and Affordable Care Act (ACA), are gaining steam.

When congressional Republicans failed to repeal the ACA in 2017, the Trump administration moved ahead with regulatory changes and executive orders aimed at killing the law, which Republicans deride as costly and ineffective. The Trump administration says these moves will enable Americans to purchase cheaper health insurance. The actions included:

- Slashing spending on advertising during ACA enrollment and cutting funding to groups that help enroll people in the 50 state-run health insurance marketplaces created by the law to enable consumers to buy health coverage.¹
- Cutting \$7 billion in federal subsidies to insurers selling plans to enrollees.²
- Proposing rules enabling small businesses and the self-employed to jointly create “association” insurance plans that do not comply with the ACA’s “essential benefits” requirement. Under the ACA, health plans must provide a certain level of benefits



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Kelley Mui helps a client sign up for health insurance under the Affordable Care Act at the Midwest Asian Health Association in Chicago in December.

in 10 categories, including maternity care, mental health, substance abuse and prescription drugs.³

- Refusing to fight a lawsuit brought by 20 states that argues the ACA, including a requirement that insurers cover pre-existing conditions, is unconstitutional. If the suit succeeds, insurers could either refuse to cover the sick or charge them substantially more than the healthy.⁴

In addition, as part of a broader tax cut bill enacted last year, Congress repealed the requirement that Americans pay a penalty if they do not have health insurance.

Because of these changes, the Congressional Budget Office (CBO) projects that premiums for those buying individual plans in 2019 will increase, on average, 15 percent and the number of uninsured Americans will rise to 35 million by 2028—from 29 million in 2018.⁵

“We’ve essentially gutted” Obamacare, President Trump said at a Republican campaign rally in Nevada on June 23.⁶

The administration said it opposes the ACA because “for seven years, our health care system has presumed that the federal government can order every American to buy health insurance, whether they want it or not; that bureaucrats in Washington, D.C., know better than patients and doctors.”⁷

Former President Barack Obama rejected these criticisms. Because of the ACA, he said in 2017, “more than 90 percent of Americans know the security of health insurance. Health care costs, while still rising, have been rising at the slowest pace in 50 years. . . . Paying more, or being denied insurance altogether due to a preexisting condition—we made that a thing of the past.”⁸

Mixed Picture

Despite all the uncertainty, the law’s advocates expect ACA plans to be available in every county in 2019, says Larry Levitt, senior vice president for health reform at the Kaiser Family Foundation, a San Francisco group that studies health care.



Getty Images/Drew Angerer

Senate Majority Leader Mitch McConnell and an aide leave the Senate floor in July 2017 after a motion on a Republican plan to replace the Affordable Care Act failed.

Chronology

2017

July

After weeks of debate, the Senate fails to repeal the Affordable Care Act after Sen. John McCain, R-Ariz., decides not to support the repeal effort.

August

A bipartisan group of senators, led by Lamar Alexander, R-Tenn., and Patty Murray, D-Wash., announce they are working together to develop legislation that would provide cost-sharing funds to insurers to cover the sick and stabilize the health insurance market; the effort goes nowhere. . . . Several large insurers, including UnitedHealthcare, announce they will no longer offer plans on the ACA marketplaces in 2018. . . . The Trump administration slashes advertising and outreach to consumers for the ACA's 2018 enrollment period.

September

The U.S. Department of Health and Human Services (HHS) tells reporters it will shut the federal ACA enrollment site every Sunday for 12 hours, except for one, during the enrollment period. Officials say the shutdown is due to site maintenance. . . . Sens. Lindsey Graham, R-S.C., and Bill Cassidy, R-La., try to move another bill to repeal the ACA to the floor but fail to garner enough votes.

October

President Trump signs an executive order ending \$7 billion in cost-sharing payments to insurers that helped low-income consumers pay out-of-pocket medical costs. Insurers make up for the lost fees by increasing premiums.

November

ACA enrollment begins for 2018, but the enrollment period is cut from 12 weeks to six.

December

As part of a major tax bill, Congress eliminates the penalty Americans were to pay if they did not have health insurance.

2018

February

The Trump administration proposes rules to increase the duration of short-term health plans, which cover catastrophic health costs, but with few of the 10 “essential benefits” required under most ACA plans. Consumer advocates fear the regulations would siphon healthy people away from the ACA marketplaces.

April

The Health and Human Services Department reports that 11.8 million people purchased health insurance coverage through the ACA's marketplaces, a slight decline from 2017.

May

The uninsured rate remains largely unchanged in 2018 at about 9 percent of all Americans, down from 17 percent in 2013, according to the Centers for Disease Control and Prevention. . . . The Congressional Budget Office projects that 2019 premiums for those buying individual plans will likely rise 15 percent and the number of uninsured Americans will increase to 35 million by 2028, up from 29 million in 2018.

June

The Trump administration sides with 20 state attorneys general who are suing the federal government. The suit argues that with the elimination of the penalty the uninsured must pay, Obamacare is now unconstitutional. . . . HHS proposes rules to allow small businesses and associations to jointly offer health plans without some benefits currently required by the ACA. . . . Virginia becomes the 33rd state to expand its Medicaid program

July

The Trump administration suspends risk-adjustment payments to insurers, which compensate insurers that enroll large numbers of unhealthy people; it later reverses course and keeps the payments.

For 2018, according to Levitt, about 25 million people have coverage through insurance plans created by the ACA—11.8 million through the health insurance marketplaces and 12 million to 15 million through the expansion of Medicaid, the joint federal and state program that subsidizes health insurance for low-income Americans and those with disabilities. Under the ACA, states can get extra federal assistance to expand their Medicaid programs.

The percentage of uninsured—children and adults—has been cut almost in half since the law was fully implemented, from 17 percent of Americans in 2013 to 9.1 percent in 2017, according to the Centers for Disease Control and Prevention and the Kaiser Family Foundation.⁹

The federal government has experimented with more than 40 new health insurance payment models, involving 18 million patients, through the Medicaid and Medicare programs. (Medicare is the federal health insurance program for those 65 or older.) The government expects the models, which aim to provide better care at lower cost, to save it \$34 billion by 2026.

But premiums are likely to increase in 2019, according to analysts and the CBO, because of uncertainty about the future of the health care markets and the loss of subsidies. As of June 30, insurers proposed changes in premium rates ranging from a decline of 12 percent for some plans offered in Minnesota to an increase of 64 percent for some in Virginia. The projections come on top of premium increases in the previous two years. In 2017, for example, the average premium rose 22 percent.¹⁰

The ACA exchanges open for 2019 enrollment on Nov. 1, and analysts are unsure how many people will purchase plans. For people who do not qualify for subsidies, premiums may be too high. To help middle-income Americans get coverage, the ACA provides a sliding scale of subsidies based on income. For example, subsidies are available for a family of four making between \$47,100 and \$94,200.¹¹

Rising premiums already have caused more than 4 million working-age people to become newly uninsured since 2016, according to a May 2018 study by the Commonwealth Foundation, a free-market think tank.¹²

“These reports show that the high-price plans on the individual market are unaffordable and forcing unsubsidized middle-class consumers to drop coverage,” said Seema Verma, the administrator of the Centers for Medicare and Medicaid Services, which oversees those two programs.¹³

ACA and the States

As the Trump administration weakens ACA regulations, some states are taking steps to stabilize the insurance markets or expand Medicaid.

New Jersey and Vermont adopted individual mandates in 2018, requiring their residents to have health insurance or pay a penalty. Previously, only Massachusetts had an individual mandate. Such measures have advanced in Connecticut, Maryland, and the District of Columbia but have not yet been enacted into law. Lawmakers in California, Hawaii, Minnesota, New York, and Rhode Island also are weighing state individual-mandate measures.¹⁴

Other states are considering or have passed reinsurance programs, which reimburse insurers for a portion of residents’ medical claims filed through the ACA exchanges. Alaska, Minnesota, Oregon, and Wisconsin have approved such plans, while Colorado, Connecticut, Hawaii, Louisiana, Maryland, Missouri, New Jersey, Oklahoma, and Washington are working on reinsurance proposals.¹⁵

Individual mandates and state-subsidized reinsurance programs could ensure the ACA marketplaces survive and help stem premium increases, experts said. “I think there’s still a window of opportunity for states to do something and have an impact on 2019 premiums,” said Sabrina Corlette, a research professor at Georgetown University’s Health Policy Institute.¹⁶

States also continue to expand their Medicaid programs. In some states only the poorest Americans with children or people with disabilities could access Medicaid. The ACA aimed to broaden eligibility and increase Medicaid payments to states.

Initially, 25 states with governors who opposed the ACA chose not to expand their Medicaid programs, but 19 states have since reversed course. In

June, Virginia became the 33rd state, in addition to D.C., to expand Medicaid. Voters in Utah and potentially Nebraska and Idaho will be able to vote on a ballot measure this fall on whether their states should expand access to Medicaid, and Florida and Texas might also consider expanding their programs, says Jeff Myers, CEO of Medicaid Health Plans of America, which represents health insurers that provide Medicaid services.

“Most people forget that the ACA was a Medicaid expansion bill,” says Myers. And because so many states have now expanded the program, he says, “the ACA is deeply ingrained. I don’t think [Congress] can overturn it.”

Currently, more than 75 million Americans have access to Medicaid—approximately 17 million more than before the ACA was enacted, according to a PricewaterhouseCoopers 2017 report.¹⁷

Campaign Debates

Despite the Medicaid expansion, a number of Republican-controlled states continue to fight the ACA in the courts, and their efforts could affect November’s midterm elections.

In February, 20 state attorneys general sued the federal government, arguing that the ACA is unconstitutional because Congress repealed the penalty Americans had to pay if they did not have health insurance. The individual mandate seeks to ensure a strong health insurance market by forcing younger and healthier Americans to buy coverage. If they declined to do so, they were to pay a penalty.

When the ACA became law, Republicans first argued that the ACA was unconstitutional because Congress had no authority to assess a penalty,

but the Supreme Court disagreed in 2012. “The Affordable Care Act’s requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax,” Chief Justice John Roberts wrote, and thus the ACA was constitutional.¹⁸

But December’s tax legislation “eliminated the tax penalty of the ACA, without eliminating the mandate itself,” the states’ February lawsuit said. The nation, as a result, “is left with an individual mandate to buy health insurance that lacks any constitutional basis.”¹⁹

In June, the Trump administration sided with the 20 states by deciding not to contest the suit. Attorney General Jeff Sessions said the Justice Department would not defend the individual mandate and that provisions in the law that prevent insurers from discriminating against people with pre-existing conditions should be struck down. However, the administration said the court should not strike down Medicaid expansion and the health insurance marketplaces.²⁰

About 133 million Americans have pre-existing conditions, and the ACA provision is politically popular: 76 percent of respondents said they want to see the federal government maintain protections for pre-existing conditions, according to a June 2018 Kaiser Family Foundation poll. A Kaiser poll taken a month later found that 63 percent of voters said a candidate’s position on continuing protections for those with pre-existing conditions is the “single most important factor,” or is a “very important” factor, when determining their vote in November 2018.²¹

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