



# Why the ACA Is the Gold Standard for Protecting People with Pre-Existing Conditions

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**OUR CARE**

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## Why the ACA Is the Gold Standard for Protecting People with Pre-Existing Conditions

*Trump's Lawsuit to Overturn the Affordable Care Act Would Eliminate Protections for 135 Million People with Pre-Existing Conditions -- and, Despite Claims to the Contrary, Republicans Have No Plan If the Law is Struck Down*

Before the election, the Senate plans to rush through President Trump's nomination of Judge Amy Coney Barrett to the Supreme Court before voters have a chance to make their voices heard. President Trump and his enablers in the Senate see the nomination of Judge Coney Barrett as their opportunity to accomplish what they haven't been able to do legislatively -- completely dismantle the Affordable Care Act and its protections for more than 135 million people with pre-existing conditions. One week after the election, the Supreme Court will hear oral arguments in *California v. Texas*, the Trump-Republican lawsuit that if successful, would overturn the ACA and throw our entire health care system into chaos. Trump and Senate Republicans want to tilt the balance of the court ahead of the lawsuit in their favor, and Judge Coney Barrett is their best chance to do it. Ending protections for people with pre-existing conditions is extremely unpopular with voters, so Senate Republicans and Trump have been scrambling to obscure their record and say they support these protections, but these lies are clearly just another election year stunt to try to distract voters from their decade-long war on health care. The reality is, they are in court trying to overturn the ACA -- the gold standard for protecting people with pre-existing conditions.

### KEY POINTS

- Thanks to the ACA, [135 million Americans](#) are protected from discrimination in the individual marketplaces, so regardless of their job status or state of residence, they will be able to access quality coverage without being charged more for having a pre-existing condition. If the ACA is overturned, these protections will be ripped away overnight, and in the middle of a pandemic.
- Over seven million Americans have already tested positive for coronavirus and would likely be deemed as [having a pre-existing condition](#) without the ACA. If the law is overturned, the millions of Americans who have contracted the virus would be at the mercy of their insurance companies who could refuse to pay for needed care. Because of Donald Trump's failure to respond to the coronavirus crisis, the number of Americans with coronavirus is only increasing, with roughly a million cases being reported every month.
- Despite claims made to the contrary, the ACA includes key protections for people with employer-based coverage, including guaranteed free preventive care, bans on annual and lifetime caps on coverage, and out-of-pocket limits for patients.
- The coronavirus pandemic demonstrates the importance of the ACA. An estimated [12 million people](#) have lost employer-sponsored coverage and experts say an overwhelming majority have been able to get covered under the ACA -- through the marketplaces or through Medicaid expansion. Every single one of these individuals now relies on the ACA's protections for pre-existing conditions. **We cannot return to the days where, if people lost their job, they would lose access to quality, affordable health care at a time they need it the most.**

### Research Confirms That 135 Million People Have A Pre-Existing Condition

Before the Affordable Care Act, insurance companies routinely denied people coverage because of a pre-existing condition or canceled coverage when a person got sick. Without the ACA, insurance companies

could have the license to do this again.

- According to a recent [analysis](#) by the Center for American Progress, roughly half of nonelderly Americans, or as many as 135 million people, have a pre-existing condition. This [includes](#):
  - 44 million people who have high blood pressure
  - 45 million people who have behavioral health disorders
  - 44 million people who have high cholesterol
  - 34 million people who have asthma and chronic lung disease
  - 34 million people who have osteoarthritis and other joint disorders
- More than [17 million](#) children, [68 million](#) women, and [32 million](#) people aged 55-64 have a pre-existing condition.
- The Kaiser Family Foundation estimates that [54 million people](#), or 27% of adults aged 18 to 64, have a condition that would have been **grounds for coverage denial** in the pre-ACA marketplace. Recent survey data found that [six in 10](#) say they or someone in their household suffers from a pre-existing condition, such as asthma, diabetes, or high blood pressure.

**Trump's Own HHS Confirmed That More Than 130 Million Have A Pre-Existing Condition.** A 2017 study published by the Department of Health and Human Services [concluded](#) that 133 million Americans have a pre-existing condition that could lead to coverage denial, premium surcharges, or benefit exclusions without the ACA: "any of these 133 million Americans could have been denied coverage, or offered coverage only at an exorbitant price, had they needed individual market health insurance before 2014."

### **Republicans Want To Put Insurance Companies Back In Charge, Ending Protections For The 135 Million People With Pre-Existing Conditions**

**The ACA included four key provisions that protect people with pre-existing conditions. If the ACA is overturned in the Texas lawsuit:**

- **GONE:** Rule that forbids insurance companies from denying coverage to people with pre-existing conditions.
- **GONE:** Rule that prevents insurers from charging people with pre-existing conditions more.
- **GONE:** Requirements that insurance companies cover essential health benefits, such as prescription drugs and maternity care.
- **GONE:** Ban on insurance companies having annual and lifetime caps on coverage.

**Premium Surcharges Could Once Again Be In The Six Figures.** Thanks to the Republican lawsuit, insurance companies can charge people more because of a pre-existing condition. The House-passed repeal bill had a similar provision, and an analysis by the Center for American Progress found that insurers could charge up to [\\$4,270 more for asthma](#), [\\$17,060 more for pregnancy](#), [\\$26,180 more for rheumatoid arthritis](#) and [\\$140,510 more for metastatic cancer](#).

**Insurance Companies Would Not Have To Provide The Coverage You Need.** The Affordable Care Act made comprehensive coverage more available by requiring insurance companies to include "essential health benefits" in their plans, such as maternity care, hospitalization, substance abuse care and prescription drug coverage. Before the ACA, people had to pay extra for separate coverage for these benefits. For example, in 2013, [75 percent](#) of non-group plans did not cover maternity care, [45 percent](#) did not cover substance abuse disorder services, and [38 percent](#) did not cover mental health services. [Six percent](#) did not even cover generic



drugs.

**Insurance Companies Could Reinstate Lifetime And Annual Limits On 109 Million Privately Insured Americans.** Repealing the Affordable Care Act means insurance companies would be able to impose [annual and lifetime limits](#) on coverage for those insured through their employer or on the individual market. In 2009, prior to the implementation of the ACA, [59 percent](#) of workers covered by employer-sponsored health plans had a lifetime limit.

**American Cancer Society, American Cancer Society Cancer Action Network, American Diabetes Association, American Heart Association, American Lung Association, and National Multiple Sclerosis Society: “Striking Down These Provisions Would Be Catastrophic And Have Dire Consequences For Many Patients With Serious Illnesses.”** [American Cancer Society et. al, [6/14/18](#)]

**Republicans Want To Give Insurance Companies The Power To Limit The Care You Get, Even If You Have Insurance Through Your Employer.**

**133 Million People With Employer Coverage Could Once Again Have To Pay For Preventative Care.** Because of the ACA, health plans must cover preventive services — like flu shots, cancer screenings, contraception, and mammograms – at no cost to consumers. More than [140 million](#) Americans are enrolled in plans that provide free preventive services, including 133 million people with employer coverage.

**Large Employers Could Choose To Follow Any State’s Guidance, Enabling Them Put Annual And Lifetime Limits On Their Employees’ Health Care.** Without the ACA’s definition of essential health benefits (EHB), states could eliminate them altogether. Large employers could [choose to apply](#) any state’s standard, making state regulations essentially meaningless. Because the prohibition on annual and lifetime limits only applies to essential health benefits, this change would allow employers to reinstate annual and lifetime limits on their employees’ coverage.

**Employers Could Eliminate Out-Of-Pocket Caps, Forcing Employees To Pay More For Care.** Under the ACA, health insurers and employer group plans must [cap the amount](#) enrollees pay for health care each year. If the law is overturned, these cost-sharing protections would be eliminated.

**Republican Bills Claiming To Protect People With Pre-Existing Conditions Are A Sham**

**Any Legislation That Meaningfully Protects People With Pre-Existing Conditions Must Include Four Key Provisions:**

- **GUARANTEED ISSUE:** Rule that forbids insurance companies from denying coverage to people with pre-existing conditions.
- **COMMUNITY RATING:** Rule that prevents insurers from charging people with pre-existing conditions more.
- **ESSENTIAL HEALTH BENEFITS:** Requirements that insurance companies cover essential health benefits, such as prescription drugs, mental health and substance abuse treatment, and maternity care.
- **LIFETIME & ANNUAL CAPS:** Ban on insurance companies having annual or lifetime caps on coverage.

## **Without All Of These Protections, Access To Care Would Be Out Of Reach For People With Serious Medical Conditions:**

For example, without the ACA, a 40-year-old patient with cancer would face a [premium surcharge](#) of anywhere between \$30,000 to \$140,000. And without the ban on annual and lifetime caps, the cancer patient – whose [costs for treatment](#) average about \$150,000 – could quickly reach their plan's limit and face the devastating choice of continuing treatment or facing financial ruin. Moreover, insurance companies could refuse to cover this person's chemotherapy drugs because they would no longer need to cover essential health benefits. And this is all of this assuming the patient was not already denied coverage outright, which would be permitted without the ACA.

## **Why State Laws Are Insufficient If Trump Succeeds In Invalidating The ACA**

A few states have [implemented](#) critical protections to serve as a backstop if the ACA is overturned, such as banning insurers from denying coverage or charging people with pre-existing conditions more. However, even these states cannot make up the federal funding provided under the ACA, which helps millions of people receive free coverage under Medicaid expansion or subsidized coverage in the individual marketplaces. If the ACA is struck down:

- **Nine Million People In the Marketplaces Would Pay More for Coverage.** If the ACA is overturned, consumers would no longer have access to tax credits that help them pay their marketplace premiums, meaning roughly nine million people who receive these tax credits to pay for coverage would have to pay more.
- **More Than 15 Million People Enrolled Through Medicaid Expansion Would Lose Coverage.** Before the coronavirus crisis, roughly [15 million people](#) were enrolled through Medicaid expansion.
- **States Would Lose important Federal Health Care Funding** — an estimated reduction of \$135 billion in the first year. The Urban Institute estimates that a full repeal of the ACA would [reduce](#) federal spending on Medicaid/CHIP care and Marketplace subsidies by \$135 billion, or 34.6 percent in the first year.

**It is critical to note that the overwhelming majority of Americans do not have any pre-existing condition protections under state law at all. Only [13 states](#) have enacted laws -- and most do not provide comprehensive protections from discrimination.**

## **Perhaps Most Egregiously, Republicans Want To Eliminate Protections For People With Pre-Existing Conditions During A Global Pandemic**

**If The ACA Were Overturned, The More Than Seven Million Americans Who Have Had Covid-19 Could Be Discriminated Against By Their Health Insurer.** “Before the ACA, medically underwritten health insurance sold to individuals could discriminate based on a person's health conditions and history as well as other risk factors. So, for example, someone who applies for medically underwritten health insurance while sick – or after having been sick – with COVID-19 might be turned down, charged more, or offered a plan that excludes coverage for COVID-19 or related symptoms. A positive test for the coronavirus could also be used in medical underwriting. In addition, someone who has recently been tested negative for COVID-19 – for

example, a rideshare driver who gets tested from time to time out of concern about his potential exposure – might also be discriminated against if insurers determine people who seek testing tend to be at higher risk of getting COVID-19. If ACA protections are invalidated, such people might be turned down, charged more, or offered a policy that temporarily or permanently excludes coverage for COVID-19.” [Kaiser Family Foundation, [9/30/20](#)]