

## Supreme Court Decision Will Determine Whether Millions of Americans Will Lose Health Coverage

On November 10, the Supreme Court, with either eight or nine justices, will hear oral arguments in a lawsuit that seeks to strike down the Affordable Care Act (ACA) and eliminate critical health care protections for millions of Americans. Below is a brief summary of what is at risk in the case. Our amicus brief provides further details, examples, and citations.<sup>1</sup>

**More than 20 million people could become uninsured and lose access to health care.** This includes 15 million people with coverage through Medicaid and the Children’s Health Insurance Program (CHIP) — and the number is growing as people lose jobs during the COVID-19 pandemic. The ACA allows states, funded mostly by the federal government, to expand Medicaid to individuals with incomes below 133% of the poverty level. Thirty-nine states have now taken up the ACA’s Medicaid expansion.

Even before the pandemic began, over 7 million consumers received premium tax credits through the health insurance marketplace. Without those tax credits, most would be uninsured or could only afford inferior plans that do not cover their conditions or provide comprehensive benefits.

States, hospitals, and community clinics — already stretched thin by COVID-19 — will not be able to absorb the costs of providing health care to millions of newly uninsured people. Some may get limited care in an emergency or could join waiting lists for free care at clinics, but most will be left without health

care. Studies show that people who are unable to buy insurance are more than twice as likely as the insured to delay or forgo needed care. More children will go without immunizations. Chronic conditions such as high blood pressure and diabetes will soar out of control when patients lose access to medications and ongoing medical care.

**Insurers could charge prohibitively high premiums to people with pre-existing conditions or deny them care altogether.** The pre-existing conditions that affect 54 million people in America could make them uninsurable in the individual market. Without the ACA’s protections, insurers would revert to refusing to sell them policies altogether. Further, between 65 million and 129 million non-elderly Americans have conditions that would lead health insurers to charge them higher premiums or deny care associated with those conditions.

**Rescission, the practice of cancelling insurance coverage when consumers file claims, might resume.** Before the ACA, when an individual filed an expensive health care claim, some insurers would search the person’s medical history for symptoms

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that could indicate a pre-existing condition — even one that had not been diagnosed when the policy was purchased. In such cases, the insurer could retroactively deny coverage. The ACA outlawed this practice, but it could resume if the law is repealed.

**Coverage for essential benefits — such as maternity benefits, mental health care, substance use disorder treatment, and prescription drugs — would be lost, and coverage for hospital care could be woefully inadequate.**

A broad array of foundational benefits, like maternity care, inpatient hospital care, mental health care, and coverage for cancer medications and other prescription drugs were all commonly omitted from privately purchased insurance policies before the ACA; even today, they are commonly omitted by insurers that sell short-term health plans that are not required to comply with the Act’s protections. Hospital care, if covered at all, could be subject to daily or annual dollar limits on coverage that would make it unaffordable.

**Costs for comprehensive insurance would rise.**

Before the ACA’s enactment, more than 90 million Americans had health insurance that capped their lifetime and annual benefits. If a child had a severe condition, such as a congenital heart defect, his or her parents might change jobs and insurance plans when those limits approached to avoid being burdened by unaffordable medical debt or the inability to get care.

Absent the ACA’s protections, small business insurance plans could charge higher prices to groups of workers in poorer health; similarly, individual plans could charge premiums based on health status. Under the ACA, health plans are “community rated”: costs are pooled across insurers, and everyone in the individual and small group markets must be offered comprehensive coverage. This keeps prices affordable regardless of health — but this protection is at risk. Also at risk are the subsidies that make individually purchased insurance more affordable to low- and middle-income people. If the Supreme Court strikes down the ACA, insurers will again be permitted to impose lifetime or annual benefit caps, and millions of families will no longer be able to afford coverage.

**Low-income adults, including many with disabilities, those in low-wage jobs, and those who are out of work due to the pandemic, would no longer qualify for Medicaid.**

Even before the pandemic, researchers estimated that 15 million Medicaid and CHIP enrollees would lose coverage if the ACA was overturned. These include low-wage workers with and without dependent children, adults who cannot work due to disability but who do not qualify for Supplemental Security Income, and adults who have lost jobs. Medicaid provides these enrollees with access to prescription drugs and medical treatment that can be life-saving. The decision to expand Medicaid to adults is left to states, and states and voters continue to indicate their support for the program. To date, 39 states have expanded.

**Medicare beneficiaries could face unaffordable costs for prescription drugs and preventive care.** Repealing the ACA would throw key Medicare provisions into chaos, including programs that reduce or eliminate cost-sharing for prescription medication and preventive care. Further, eliminating reforms to Medicare payments and Medicare Advantage would negatively impact Medicare’s infrastructure, cause major delays in processing payments, and increase costs.

**Eliminating protections during the COVID-19 crisis would devastate families and the health care system.** Health care providers can bill a limited amount of federal relief funding if they treat uninsured patients whose primary diagnosis is COVID-19. But this funding will not stretch to cover millions more people who might suddenly lose coverage as a result of the Supreme Court overturning the ACA. Patients with a secondary diagnosis of COVID-19 or who have a different serious disease are not covered by this fund.

We do not know how long the effects of COVID-19 will last for patients — whether they will need rehabilitation long after federal funding ends, or if they will have other health complications in years to come. The 7 million Americans who have been diagnosed with COVID-19 now have it as a pre-existing condition.

Medicaid and the health insurance exchanges are a lifeline for the staggering numbers of people who have lost job-based coverage since the pandemic began. Yet lack of outreach and the need for further financial support are causing still more people to lose insurance in record numbers. For example, during a three-week period that ended July 14, 2 million adults whose earnings had declined during the pandemic became uninsured. The impact of coverage losses fall hardest on the most vulnerable, including children, low-wage workers, and communities of color.<sup>2</sup> People are delaying medical care — with health consequences to themselves and financial consequences to the health care system. These problems will grow much worse if the ACA’s lifeline to coverage ends.

For all these reasons, it would be disastrous for the Court to strike down the Affordable Care Act. Every American deserves the opportunity to live a healthy life and receive quality health care, but this suit threatens to take away that opportunity. Moreover, as our amicus brief<sup>3</sup> explains, the suit hinges on an odd legal argument that, when Congress zeroed out the tax penalty for going without insurance, Congress intended to strip away all the protections of the ACA. Senator Lamar Alexander (R-TN), Chairman of the Senate Committee on Health, Education, Labor and Pensions, which has primary jurisdiction over the ACA insurance market reforms, pointed out: “I don’t know one single senator who thought that.”<sup>4</sup> The Fifth Circuit Court wrote that it is “simply unfathomable” that Congress would have “hinged the future of the entire [ACA] on the viability of a single, deliberately unenforceable provision.”

## Endnotes

<sup>1</sup> Brief of Amici Curiae Families USA et. al, Supporting Petitioner the State of California, et. al, In the Supreme Court of the United States, State of California v. State of Texas, et al; State of Texas et al v. State of California, May 2020, <https://familiesusa.org/resources/brief-of-amici-curiae-families-usa-et-al-supporting-petitioner-the-state-of-california-et-al/>

<sup>2</sup> Stan Dorn, “America’s Coverage Crisis Deepens: New Survey Data Show Millions of Adults Became Uninsured, Starting in Late June” Families USA, August 3, 2020, <https://familiesusa.org/resources/americas-coverage-crisis-deepens-new-survey-data-show-millions-of-adults-became-uninsured-starting-in-late-june/>

<sup>3</sup> Brief of Amici Curiae Families USA et. al, Supporting Petitioner the State of California, et. al, In the Supreme Court of the United States, State of California v. State of Texas, et al; State of Texas et al v. State of California, May 2020, <https://familiesusa.org/resources/brief-of-amici-curiae-families-usa-et-al-supporting-petitioner-the-state-of-california-et-al/>. Sources for all of the points in this summary are included in this brief unless otherwise noted.

<sup>4</sup> *Meet the Press* (NBC television broadcast May 10, 2020), <https://www.nbcnews.com/politics/meet-the-press/blog/meet-pressblog-latest-news-analysis-data-driving-political-discussionn988541/ncrd1204001#blogHeader>

This publication was written by:

**Cheryl Fish-Parcham**, Director of Access Initiatives, Families USA

The following Families USA staff contributed to the preparation of this material (listed alphabetically):

Kimberly Alleyne, Senior Director, Communications

Justin Charles, Digital Media Associate

Katie Corrigan, Chief of Staff

Nichole Edralin, Senior Manager, Design and Publications

Eliot Fishman, Senior Director of Health Policy

Lisa Holland, Senior Communications Manager

Adina Marx, Communications Associate

**FAMILIESUSA**  
THE VOICE FOR HEALTH CARE CONSUMERS

1225 New York Avenue NW, Suite 800  
Washington, DC 20005  
202-628-3030  
info@familiesusa.org  
FamiliesUSA.org  
facebook / FamiliesUSA  
twitter / @FamiliesUSA