

A Review of the Affordable Care Act's Key Provisions



And the Potential Implications of the Supreme Court's Overturning the Law

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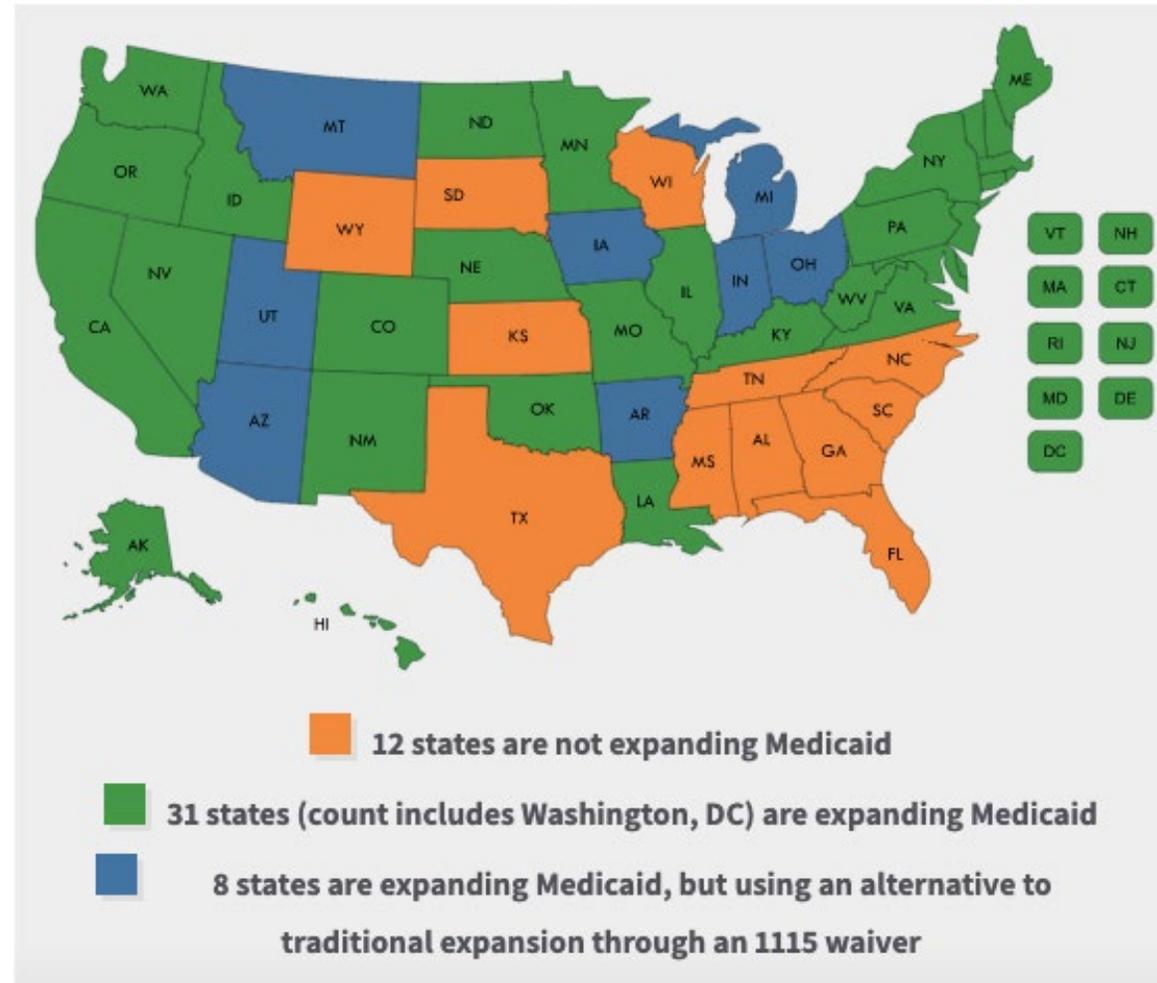
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ACA Medicaid Expansion

As of November 2020, 38 states and DC have expanded Medicaid



Note: MO & OK have not yet implemented expansion
<https://www.nashp.org/states-stand-medicaid-expansion-decisions/>

If ACA Is Overturned: Potential Implications for Medicaid Expansion



- It would eliminate adult group eligibility category providing coverage to 138% FPL.
- With this eligibility category eliminated, states would not be able to claim the 90% federal match they currently receive for the expansion group.
- As of June 2019, 15 million enrolled in ACA's expansion group could lose coverage and access to care.
 - Current enrollment in this eligibility category is probably larger because of Medicaid enrollment increases due to economic effects of COVID-19.
- It is unclear how the program would be affected as states wait for federal guidance on how to “unwind” expansion, and the overall process would be extremely disruptive to state Medicaid agency operations.

Sources: “Eliminating the ACA: What Could It Mean for Medicaid Expansion?” Kaiser Family Foundation, Oct. 2020.

<https://www.kff.org/policy-watch/eliminating-the-aca-what-could-it-mean-for-medicaid-expansion/>

and “A Supreme Court Decision to Strike Down the ACA Would Create Chaos in the Health Care System.” Brookings Institution, Oct. 2020.

<https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/10/13/a-supreme-court-decision-to-strike-down-the-aca-would-create-chaos-in-the-health-care-system/>



If ACA Is Overturned: Potential Implications for Medicaid Expansion



- Providers would lose Medicaid reimbursement for these individuals, which has helped reduce uncompensated care costs and expanded their service delivery capacity.
 - If the ACA had been overturned in early 2019, estimates found that the amount of uncompensated care could nearly double, from \$61.3 billion to \$111.4 billion.
- Other improvements in care access, utilization, affordability, and addressing health disparities would be negatively affected.

Sources: “Eliminating the ACA: What Could It Mean for Medicaid Expansion?” Kaiser Family Foundation, Oct. 2020. <https://www.kff.org/policy-watch/eliminating-the-aca-what-could-it-mean-for-medicaid-expansion/> and “Implications of the Fifth Circuit Court Decision in *Texas v. United States*.” Urban Institute, Dec. 2019. https://www.urban.org/sites/default/files/publication/101361/implications_of_the_fifth_circuit_court_decision_in_texas_v_united_states_final_121919_v2.pdf



State Options for Maintaining Medicaid Expansion Coverage



- States interested in maintaining coverage for individuals up to 138% FPL could:
 - Seek a waiver from HHS to maintain the eligibility category:
 - ✦ This would take time for states to develop and receive federal approval.
 - ✦ States would not receive enhanced federal match rate. (In FY 2021, regular Medicaid match rates range from 50 to 77.76%.)
 - They could use state-only funding to provide coverage to these individuals.
 - ✦ However, this would be prohibitively costly for states, especially given current state budget constraints due to COVID-19's economic impact.
 - States could expand coverage eligibility levels for parents to cover some of these individuals
 - ✦ States would not receive the enhanced federal match rate.

ACA Changes to Medicaid Eligibility Policies and Systems



- States were required to [implement many changes](#) to their Medicaid programs related to eligibility, enrollment, and operations, regardless of whether they opted to implement the Medicaid expansion, including:
 - Single application for all insurance affordability programs;
 - New timeliness standards and move toward “real time” eligibility determinations;
 - New modified adjusted gross income (MAGI) income methodology for most non-elderly, non-disabled individuals applying for Medicaid, and no asset tests or in-person interviews; and
 - Medicaid agency coordination with exchanges on eligibility and enrollment functions.

If ACA Is Overturned: Potential Implications for Medicaid Eligibility Policies and Systems



- It is unclear what eligibility determination rules would apply and what changes states would need to make to their eligibility systems, policies, and processes.
- This could result in a shift from using MAGI to determine Medicaid eligibility.
 - States [invested](#) significant resources to implement this standard and it would be costly and administratively burdensome to make systems and application changes.
 - States might face penalties under federal or state law for eligibility determination errors or delays.
- Other issues for states' Medicaid eligibility determination processes include:
 - Disenrolling expansion individuals and coordination with exchanges while they may be in the process of also making coverage changes due to lack of advance premium tax credits (APTCs).
 - ✦ At least 10 states and DC have created exchange eligibility systems that are fully integrated with their Medicaid programs.
 - Communicating eligibility changes to enrollees during time of flux would be challenging.

If ACA Is Overturned: Potential Implications for Medicaid Eligibility Policies and Systems



- ACA also increased Medicaid eligibility threshold for children to 138% FPL.
 - Could revert Medicaid eligibility levels for children ages 6-18 to lower levels required pre-ACA.
 - Could result in disruptions to care or unintended loss of coverage and additional systems changes.
- ACA provided new authority for hospital presumptive eligibility.
 - Could delay needed care for uninsured individuals, result in hospitals not receiving payment for care delivered, and/or increase demand on states to render fast eligibility determinations for people in need of medical services.

If ACA Is Overturned: Potential Implications for Other Public Coverage Programs



- Basic health program (BHP)
 - States could create an insurance product for individuals with incomes between 133-200% of the FPL who do not qualify for Medicaid, Children's Health Insurance Program (CHIP), or other minimum essential coverage (MEC).
 - MN and NY have implemented BHPs; in [2019](#) nearly 883,000 individuals currently enrolled could lose coverage.
- This could affect the [option](#) to offer CHIP coverage to children of state employees.
 - [18 states](#) (AL, AR, CO, CT, FL, GA, KS, KY, ME, MS, MT, NV, NC, PA, TN, TX, VA, WV) have implemented this option in their separate CHIP programs.

If ACA Is Overturned: Potential Implications for Medicaid Long-Term Services and Supports



- Could affect the authority states now have to implement various options for Medicaid home- and community-based services (HCBS) established by the ACA, which include:
 - Additional options for Medicaid home- and community-based services through 1915 (i) state options
 - ✦ Sixteen states and DC have approved state plan amendments (AR, CA, CT, DE, DC, ID, IN, IA, MD, MI, MN, MS, NH, NV, OH, OR, TX)
 - Community First Choice option that allows states to provide HCBS for individuals with disabilities who need institutional-level care (states receive a 6 percentage point increase in federal match).
 - ✦ Nine participating states (AK, CA, CT, MD, MT, NY, OR, TX, WA)
 - Medicaid health home state plan option for individuals with two or more chronic conditions (states received 90% federal match for first eight quarters of implementation).
 - ✦ As of [April 2020](#), 20 states and DC have 35 approved Medicaid health home models.

ACA Changes Increased Access to Private Market Coverage

- It established federal policies that expanded the availability of private market coverage to millions of Americans.
 - Federal subsidies available to purchase health insurance:
 - ✦ **Advance Premium Tax Credits (APTCs)** are available to individuals earning between 100-400% FPL.
 - ✦ **Cost-sharing reductions (CSRs)** are available to individuals earning between 100-250% FPL.
 - **Required coverage of dependents up to age 26.**
 - **Employer coverage mandates:**
 - ✦ All employers with >200 employees must enroll employees in coverage.
 - ✦ Assesses penalties on employers with >50 employees who have at least one employee who receives APTCs.

Sources: The Congressional Budget Office, Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2019 to 2029,

https://www.cbo.gov/system/files/2019-05/55085-HealthCoverageSubsidies_o.pdf

Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation. Health Insurance Coverage and the Affordable

Care Act 2010-2016, 2016, <https://aspe.hhs.gov/system/files/pdf/187551/ACA2010-2016.pdf>

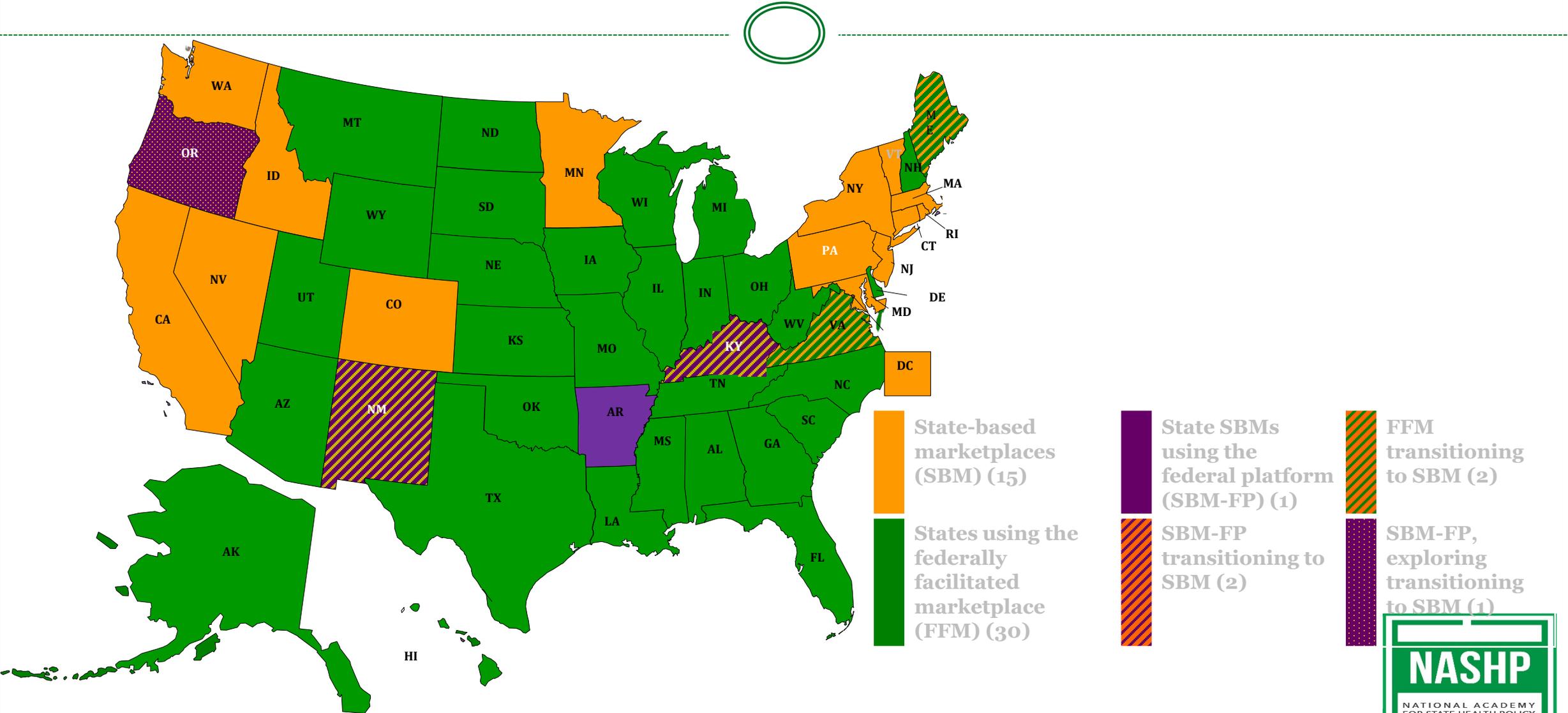


ACA Changes Increased Access to Private Market Coverage



- Established health insurance marketplace(s) to provide “no-wrong door” access to streamline and facilitate the purchase of health coverage. Major functions include:
 - ✦ Maintenance of online insurance shopping portal;
 - ✦ Review and certification of plans sold on the marketplace;
 - ✦ Administration of marketing, outreach, and educational resources and programs, including Navigator programs to provide community-based assistance;
 - ✦ Operation of call centers responsive to consumer questions regarding enrolling in marketplace coverage; and
 - ✦ Seamless eligibility systems for Medicaid or private coverage.
- Fifteen states operate state-based insurance marketplaces (SBM). The remaining states use the federal marketplace, healthcare.gov, or operate a hybrid model.

Current Health Insurance Marketplace Models



If ACA Is Overturned: Potential Implications for Access to Private Market Coverage



- Millions of individuals would no longer be able to afford or may lose access to private insurance:
 - 9.2 million individuals receive APTCs; 5.3 million receive CSRs;
 - 10.7 million are enrolled in private insurance through the health insurance markets; and
 - ~2.3 million young adults are covered under extension of coverage to dependents.
- States would face tremendous hurdles to filling the financial gaps left by loss of federal subsidies.
 - \$53 billion in federal subsidies were provided to enrollees in 2019.
 - CA, CO, MA, NJ, and VT operate insurance subsidy programs, currently designed to supplement subsidies available from the federal government.
- States may opt to continue policies that extend availability of coverage to dependents.
 - 40 states and DC have state legislation or regulations allowing health insurance plans to cover dependents older than 18. Age requirements range from 22 to 30.

Centers for Medicare and Medicaid Services, 2019 Marketplace Open Enrollment Period Public Use Files. https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2019_Open_Enrollment

Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation. Health Insurance Coverage and the Affordable Care Act 2010-2016, 2016, <https://aspe.hhs.gov/system/files/pdf/187551/ACA2010-2016.pdf>



If ACA Is Overturned: Potential Implications for Access to Private Market Coverage



- Loss of a streamlined eligibility system for coverage programs due to possible elimination of health care marketplaces.
 - In 2019, marketplaces processed 14.3 million applications, covering 24.6 million individuals interested in receiving insurance either through the marketplace or Medicaid.
- Established state health insurance marketplaces (SBMs) could be retained as the vehicle through which consumers can shop for coverage.
 - SBMs are established under state law as public or quasi-public agencies, SBMs are financially self-sustaining and do not rely on federal funding.
- Significant challenges may hinder ongoing SBM operations, including:
 - Inability to sustain operational costs (most SBMs are funding via an enrollment-based assessment on insurers) because without APTC, enrollment is expected to plummet.
 - Possible elimination the Federal Data Services Hub—the federal data system established specifically to process eligibility for marketplace coverage. It provides eligibility data from across federal agencies, including IRS, the Department of Homeland Security, the Office of Personnel Management, and the Department of Justice.
 - ✦ States may seek to utilize data from state sources including departments of employment, taxation, and Medicaid to capture information needed for to determine eligibility for state programs. However, building data systems usually requires substantial financial investments.

If ACA Is Overturned: Potential Implications for Access to Private Market Coverage



- Significant disruption of health insurance markets resulting from a rise in the uninsured.
 - Impacts could include premium increases/fluctuations and insurer exits/insolvency.
- Disruptions in access to care could occur, including chronic disease management and preventive services enabled by health insurance coverage.
 - Increased state spending (~\$16.6 billion) on uncompensated care
 - Increased demand/strain on safety-net providers
- Significant job losses across major industries, including health care, construction, real estate, retail trade, finance, and insurance (est. 2-3 million).

Buettgens et al. The Cost of ACA Repeal. (2016) The Urban Institute. <https://www.urban.org/sites/default/files/publication/81296/2000806-The-Cost-of-the-ACA-Repeal.pdf>

Rivlin et al. Why Repealing the ACA Before Replacing It Won't Work, and What Might. The Brookings Institute. https://www.brookings.edu/research/why-repealing-the-aca-before-replacing-it-wont-work-and-what-might/?utm_medium=social&utm_source=twitter&utm_campaign=es

Ku et al.. The Economic and Employment Consequences of Repealing Federal Health Reform: A 50 State Analysis. (2017) The George Washington University https://publichealth.gwu.edu/sites/default/files/downloads/HPM/Repealing_Federal_Health_Reform.pdf



ACA Changes to Insurance Regulations



- The ACA imposed significant federal requirements on insurers, especially those participating in the small group and individual market.

Regulating insurance costs

- Rate review of premium increases >10%
- Single pool to base health insurance costs (cannot charge “riskier” people more)
- Federal Risk Adjustment Program to balance costs between insurers that take on different risk
- Reinsurance programs: Funded through 1332 innovation waivers
- Restrictions on rating factors

Limiting enrollee out-of-pocket (OOP) cost

- No lifetime or annual limits on spending
- Annual caps on out-of-pocket spending
- No cost sharing on preventive care
- Medical Loss Ratio (MLR): A percent of premiums must spend on medical services or quality improvement (80% in individual and small group markets; 85% for large group)

Consumer protections/ anti-discrimination

- No coverage denials for pre-existing conditions (Guaranteed issue)
- Prohibitions on rescinding coverage after enrolled
- Guaranteed renewability of coverage
- No rating based on gender or health status (medical underwriting)
- Prohibits discrimination (based on race, ethnicity, sex, age, or disability) by health insurers and in HHS funded programs

Minimum coverage requirements

- Requirements to cover essential health benefits
- Requirement to cover adequate provider networks
- Requirement that health plans meet minimum value requirements (actuarial value)

Transparency and oversight

- Enhanced noticing requirements on insurers and employers
- Required maintenance of provider directories
- Federal process for coverage appeals

State Actions Incorporating Insurance Market Reforms



Several states have taken steps to incorporate many of the ACA's insurance market reforms into state law.

State actions to limit OOP costs

State	CA	C O	CT	D C	D E	HI	IA	IN	LA	M A	M D	M E	M N	M O	N D	N E	N H	NJ	N Y	N C	O R	RI	U T	V A	VT	W A
Impose OOP Maximums	X	X	X	X	X	X			X		X	X								X				X	X	X
Limit OOP for preventive services	X	X	X	X	X	X	X	X		X	X	X			X	X			X	X	X		X	X	X	
Prohibit annual and lifetime limits	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X	X
Established Medical Loss Ratio	X		X	X							X	X	X					X				X			X	
In-network rates for emergency	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X		X	X	X	X	X		X	X	

Actions Incorporating Insurance Market Reforms



- State actions related to anti-discrimination protections:
 - 20 states + DC require insurers to extend coverage to qualified individuals regardless of health status (guaranteed issue) .
 - 21 states + DC prohibit insurers from rescinding coverage after a person has become enrolled (e.g., because of concerns over enrollee's health status).
 - 16 states require community rating/prohibit medical underwriting (charging differently based on health status).
 - 15 states + DC prohibit insurers from gender rating (charging differently based on gender).
 - 16 states + DC prohibit insurers from discrimination based on sexual orientation and gender identity.*

* Movement Advancement Project, Healthcare Laws and Policies https://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies

Actions Incorporating Insurance Market Reforms



- State actions to set minimum coverage standards:
 - 22 states + DC required coverage of essential health benefits (EHBs), a set of 10 required benefit categories, including emergency care, hospitalization, prescription drugs, and mental health services.
 - 28 states + DC have set network adequacy standards requiring that insurers offer a sufficient choice of providers to assure accessibility of services without unreasonable delay.*
 - 13 states + DC have adopted minimum standards for the proportion of health care costs health insurers are required to cover (actuarial value).

*National Conference of State Legislatures, State Laws Related to Access to Healthcare Providers Network Adequacy, Updated 2018, <https://www.ncsl.org/research/health/insurance-carriers-and-access-to-healthcare-providers-network-adequacy.aspx>



Actions Incorporating Insurance Market Reforms



- State actions to regulate insurance costs:
 - 47 states + DC operate federally certified rate review programs.
 - Consolidation of insurance market risk pools:
 - ✦ Two states (MA, VT) and DC have merged their individual and small group markets; and
 - ✦ Six states + DC have created a single geographic rating area.
 - Insurer risk mitigation programs:
 - ✦ **Reinsurance:** Fourteen states operate a reinsurance program.
 - Current programs are primarily financed with federal funds available through Section 1332 state innovation waivers. This funding would be **eliminated** if the ACA is overturned.
 - ✦ **Risk Adjustment:** States were given an option to establish their own risk adjustment program in lieu of the federal program. No state, to date, has established its own program.

Actions Incorporating Insurance Market Reforms



- State actions related to transparency and oversight:
 - State insurance departments have and may continue to serve as the primary vehicle to encourage transparency and oversight of insurers participating in the state.
 - ✦ States may issue guidance, regulations or codify laws aimed at increasing transparency, including requirements on notices that must be sent to consumers.
 - ✦ States may look at ways to further bolster existing state processes for registering consumer complaints regarding health insurance/insurers, including a streamlined process for appeal of coverage denials.
 - ✦ At least 20 states have set requirements related to the establishment and maintenance of provider directories.*

*Busch, S. Kyanko, K. Incorrect Provider Directories Associated With Out-Of-Network Mental Health Care And Outpatient Surprise Bills. (2020) Health Affairs. <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2019.01501>



If ACA Is Overturned: Potential Implications of Rescinding Insurance Market Regulations



- If severed from federal law, each policy could have vastly different repercussions that will likely increase premium costs and/or eliminate coverage, changes would include:
 - Elimination of protections for pre-existing conditions, leaving consumers vulnerable to high costs and/or lack of access to coverage;
 - Altering dynamics of insurance risk pools - healthy individuals may not enroll due to cost of unsubsidized plans; older, sicker individuals will pay exorbitant costs or not have access; and
 - Less insurer competition in some markets due to greater, unmitigated risk factors.
- States may need to balance the trade-offs of maintaining requirements and consumer protections, with additional costs typically associated with insurer mandates.
- Limitations of state authority restricts the capacity of states to regulate insurance beyond the small group and individual insurance markets.

If ACA Is Overturned: Potential Implications for State-Level Innovation Options in ACA



- Prevention and Public Health Fund:
 - Could be dissolved, and although not fully funded as intended, it is an important source of funding for state health departments and state and local level responses to public health issues; and these agencies are already strained due to COVID-19.
 - In 2017, the Trust for America's Health estimated that states would lose more than \$3 billion over five years if ACA were repealed.
- Center for Medicare & Medicaid Innovation (CMMI):
 - Could lose authority and financing to operate model test programs or implement innovation projects.
- Efforts to address issues for individuals dually-enrolled in Medicare and Medicaid:
 - Could affect financial alignment initiative to improve care for dual eligibles in 11 states (CA, IL, MA, MI, MN, NY, OH, RI, SC, TX, WA).

Other Key ACA Provisions Likely Affected



- Medicaid drug rebate:
 - ACA increased drug rebate percentage; these changes could be invalidated, which would affect state Medicaid prescription drug costs.
- Generic versions of biologic drugs:
 - ACA authorized the Food and Drug Administration to approve generic versions of biologics.
- Medicare Part D:
 - “Donut hole” coverage gap could return, resulting in increased drug spending for individuals and costs for state Medicaid agencies’ coverage of dual eligibles.
- Hospital community benefit requirements:
 - Could affect ACA’s requirements for nonprofit hospitals to maintain tax-exempt status.
 - However, many states have implemented initiatives that go beyond the ACA requirements.
- Medicaid eligibility for former foster care youth up to age 26:
 - [Eleven states](#) provide this coverage (CA, DE, GA, KY, MA, NM, PA, SD, UT, VA, WI).

Additional Resources



- 2020: [The Affordable Care Act at 10: States Lead the Way](#)
 - A timeline of coverage implementation and a 10th anniversary review of state's activities to implement key ACA provisions.
- 2017: [NASHP Chart: An Overview of ACA Provisions and Their Repeal Implications for States](#)