Trump Administration Actions Threaten People with Pre-Existing Conditions

State of Nevada

Democratic Staff Report
Committee on Oversight and Government Reform
U.S. House of Representatives

October 2018

democrats-oversight.house.gov

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EXECUTIVE SUMMARY

Before the Patient Protection and Affordable Care Act (ACA) was enacted in 2010, one of the most devastating experiences for Americans with pre-existing health conditions was the refusal by insurance companies to cover them, or to charge them rates that were exorbitantly higher than for people without pre-existing conditions. This discrimination by insurance companies against people with pre-existing health conditions was allowed under federal law, and it was a leading cause of bankruptcies as families often lost their homes and their entire savings.

Congress ended this legalized discrimination by establishing a set of new statutory protections for people with pre-existing conditions. Among these protections, insurance companies are now required to offer coverage to everyone, regardless of health status—a protection known as "guaranteed issue." Insurance companies are also barred from charging higher premiums on the basis of health status—a protection known as "community rating." In addition, insurance companies are now prohibited from selling policies that do not cover pre-existing health conditions—a protection known as the "coverage exclusion prohibition."

On June 7, 2018, Attorney General Jeff Sessions sent a letter informing House Speaker Paul Ryan that the Department of Justice no longer will defend in federal court the ACA's requirement that individuals maintain insurance coverage and that the guaranteed issue, community rating, and coverage exclusion provisions should no longer remain in effect. His letter did not offer any alternative protections for individuals with pre-existing conditions. He explained that he was acting "with the approval of the President of the United States."

In order to assess the potential effects of the Trump Administration's decision not to defend these protections for Americans with pre-existing health conditions, this report was prepared by the Democratic staff of the House Committee on Oversight and Government Reform for the State of Nevada.

This report estimates that as many as 123,000 people in the individual market in the state may lose federal protections against coverage denials or premium increases as a result of their pre-existing health conditions, gender, or age.

- **Individuals with Pre-Existing Health Conditions:** As many as 79,000 people in the state who purchase insurance through the individual market have pre-existing health conditions and may lose federal protections against coverage denials or premium increases as a result of the Administration's actions. Of these individuals, 36,000 have pre-existing health conditions severe enough that insurers may deny them coverage altogether.

- **Women:** As many as 75,000 women in the state who purchase coverage through the individual market may lose federal protections against coverage denials or premium increases because of their gender as a result of the Administration's actions.

- **Older Adults:** If current statutory protections are eliminated, older Americans could be charged more than ten times the amount younger adults pay for their insurance premiums. As many as 54,000 individuals between 50 and 64 years old in the state who purchase health insurance through the individual market may lose federal protections against coverage denials or premium increases as a result of the Administration's actions.

Although this staff report focuses primarily on individuals who purchase insurance through the individual market, 1,349,000 individuals in the state with employer-sponsored insurance may also be at risk of losing federal protections.

Current law prevents employer-sponsored group health plans from excluding coverage for pre-existing health conditions. As a result of the Trump Administration's decision not to defend this provision, employer plans once again may be able to exclude coverage of pre-existing health conditions to new employees for up to a year if they did not maintain continuous insurance coverage before enrolling in the employer's insurance plan.

Finally, some states have their own state-level protections for people with pre-existing health conditions, women, and older Americans. However, if these state protections are rolled back, there no longer will be any backstop at the federal level, and the legal landscape will revert back to the era of legalized insurance company discrimination against people with pre-existing conditions.

METHODOLOGY

This staff report is based on data from the 2016 American Community Survey (ACS), which is compiled by the Census Bureau.[1] The number of people who could lose their health insurance or be charged more for coverage is drawn from ACS survey data.

Individuals are determined to have insurance coverage through the individual market if they report having no insurance except for insurance purchased directly from insurance companies. ACS data is also used to determine the gender and age of individuals purchasing plans through the individual market.

The number of individuals with pre-existing health conditions is based on a 2017 estimate by the Department of Health and Human Services that 55% of individuals who purchase plans on the individual market nationwide have pre-existing health conditions.[2]

The number of individuals under 65 with declinable pre-existing health conditions is based on state-level estimates from the Kaiser Family Foundation.[3]

All estimates are population-weighted and adjusted to prevent double-counting.

I. THE TRUMP ADMINISTRATION'S DECISION TO ABANDON PRE-EXISTING CONDITION PROTECTIONS

Before Congress passed the current statutory protections, insurance companies discriminated against people on the basis of gender, age, and pre-existing medical conditions, such as cancer, asthma, and diabetes. Individuals with severe pre-existing health conditions were denied insurance coverage, and those who were able to obtain coverage were charged significantly higher premiums. Insurance companies also used exclusionary riders and imposed higher deductibles for people with pre-existing health conditions.[4]

For example, one study found that a decade-old knee surgery could increase premiums by 25% to 40%, and depression could increase premiums by 20% to 50%.[5] Another analysis found that being overweight could increase premiums by 25%, and having asthma could increase an individual's premiums by more than $4,000 per year.[6] The exorbitant cost of medical bills drove many Americans and their families to bankruptcy. In 2010 alone, there were more than one million bankruptcy filings, and medical bills were a contributing factor in many of these cases.[7]

In 2010, Congress enacted a set of protections for people with pre-existing conditions. Among these statutory protections, insurance companies are now required to offer coverage to everyone, regardless of health status—a protection known as "guaranteed issue."[8] Insurance companies are also barred from charging individuals higher premiums on the basis of their health status—a protection known as "community rating."[9] In addition, insurance companies are now prohibited from using policy riders to exclude coverage for pre-existing health conditions—a protection known as the "coverage exclusion prohibition."[10]

In 2012, the Supreme Court upheld the constitutionality of the ACA's requirement that individuals maintain health insurance coverage.[11] After Donald Trump became President, however, the Administration and congressional Republicans sought to undermine the health care law by reducing to zero the penalty for not having health insurance. They did this through the tax bill that was passed last year.[12]

On June 7, 2018, Attorney General Jeff Sessions sent a letter informing House Speaker Paul Ryan that the Department of Justice no longer will defend in federal court the constitutionality of the requirement to maintain individual insurance coverage, which he argues will become unconstitutional on January 1, 2019. He also explained that the guaranteed issue, community rating, and coverage exclusion provisions should no longer remain in effect.[13]

More than a dozen state Attorneys General oppose the Trump Administration's position and have intervened in ongoing litigation.[14]

The Trump Administration has yet to offer any alternative proposals to protect individuals with pre-existing conditions from discrimination.

II. ESTIMATED EFFECTS OF THE TRUMP ADMINISTRATION'S ACTIONS

This staff report examines the estimated impact of the Trump Administration's decision to abandon this set of protections on individuals in the State of Nevada. As many as 123,000 people in the individual market in the state may lose federal protections against coverage denials or premium increases as a result of their pre-existing health conditions, gender, or age.

Effects on Individuals with Pre-Existing Health Conditions

In the state, as many as 79,000 people who purchase insurance through the individual market have pre-existing health conditions and may lose federal protections against coverage denials or premium increases as a result of the Administration's actions. Of these individuals, 36,000 have pre-existing health conditions severe enough that insurers may deny them coverage altogether.

Effects on Women

Under current federal law, insurance companies are prohibited from charging women higher premiums on the basis of gender. If the Trump Administration's actions are successful, federal protections barring insurance companies from charging women more than men for insurance will be eliminated.

In the state, as many as 75,000 women who currently purchase coverage through the individual market may lose federal protections against coverage denials or premium increases because of their gender as a result of the Trump Administration's actions. As many as 22,000 of these women are in households that do not qualify for financial assistance in the form of tax credits and would bear the full cost of premium increases.

Effects on Older Adults

Before current protections were put in place, older individuals seeking coverage were charged significantly higher premiums than younger individuals. In certain cases, unsubsidized insurance premiums for older Americans were 17 times higher than premiums for healthy, young adults.[15] Current statutory provisions protect older adults from this kind of rate discrimination by capping their insurance rate at three times the premium of a younger adult.

In the state, as many as 54,000 individuals between 50 and 64 years old who currently purchase health insurance through the individual market may lose federal protections against coverage denials or premium increases as a result of the Trump Administration's actions. Of these older adults, as many as 19,000 do not qualify for financial assistance in the form of tax credits and would bear the full cost of premium increases.

Effects on Individuals with Employer-Sponsored Coverage

Individuals with pre-existing conditions who obtain coverage through the individual market are most at risk if existing statutory protections are eliminated because they lack group

buying power. However, certain protections also apply to people who obtain coverage through their employers, and these individuals also may be at risk as a result of the Trump Administration's actions.

Current law prevents employer-sponsored group health plans from excluding coverage for pre-existing health conditions. As a result of the Trump Administration's decision not to defend this provision, employer plans once again will be able to exclude coverage for pre-existing health conditions to new employees for up to a year if they did not maintain continuous insurance coverage before enrolling in the employer's insurance plan.[16]

In the state, approximately 1,349,000 individuals who obtain coverage through their employers could be at risk of losing this federal protection.

CONCLUSION

The Trump Administration's decision not to defend key federal protections against insurance company discrimination threatens more than 130 million people with pre-existing health conditions in the United States, including 79,000 people who obtain coverage through the individual market in the State of Nevada. If the Trump Administration is successful in effectively eliminating the guaranteed issue provision, the community rating provision, and the coverage exclusion prohibition, insurance companies once again will be able to increase premiums and deny coverage altogether based on gender, age, and pre-existing health conditions.

APPENDIX: DISTRICT-LEVEL BREAKDOWN FOR THE STATE OF NEVADA

District	People at Risk of Coverage Loss or Premium Increases[a]	People with Pre-Existing Health Conditions at Risk of Coverage Loss or Premium Increases[b]	People with Pre-Existing Health Conditions at Risk of Coverage Denials[c]	Women at Risk of Coverage Denials or Premium Increases[d]	Women Who Would Bear the Full Cost of Premium Increases[e]	Older Adults at Risk of Coverage Denials or Premium Increases[f]	Older Adults Who Would Bear the Full Cost of Premium Increases[g]	People with Employer-Sponsored Coverage[h]
NV-01	26,000	16,000	7,000	15,000	4,000	10,000	3,000	282,000
NV-02	30,000	19,000	9,000	19,000	5,000	15,000	5,000	327,000
NV-03	43,000	27,000	12,000	26,000	9,000	18,000	8,000	414,000
NV-04	25,000	16,000	7,000	15,000	5,000	11,000	3,000	326,000

All figures rounded to the nearest thousand

[a] Maximum Number of People in the Individual Market Who May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

[b] Maximum Number of People with Pre-Existing Health Conditions Who Purchase Insurance through the Individual Market and May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

[c] Maximum Number of People with Deniable Pre-Existing Health Conditions Who Purchase Insurance through the Individual Market (Kaiser Family Foundation; 2016 American Community Survey)

[d] Maximum Number of Women Who Purchase Insurance through the Individual Market and May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

[e] Maximum Number of Women Who Purchase Insurance through the Individual Market and Would Bear the Full Cost of Premium Increases (2016 American Community Survey)

[f] Maximum Number of Older Adults (50-64) Who Purchase Insurance through the Individual Market and May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

[g] Maximum Number of Older Adults (50-64) Who Purchase Insurance through the Individual Market and Would Bear the Full Cost of Premium Increases (2016 American Community Survey)

[h] Number of People Who Obtain Coverage through Their Employers (2016 American Community Survey)

ENDNOTES

[1] Census Bureau, *2016 American Community Survey* (online at www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/).

[2] Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, *Health Insurance Coverage For Americans With Pre-Existing Conditions: The Impact of the Affordable Care Act* (Jan. 5, 2017) (online at aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf).

[3] Kaiser Family Foundation, *Pre-Existing Conditions And Medical Underwriting in the Individual Insurance Market Prior to the ACA* (Dec. 2016) (online at www.files.kff.org/attachment/Issue-Brief-Pre-existing-Conditions-and-Medical-Underwriting-in-the-Individual-Insurance-Market-Prior-to-the-ACA).

[4] Memorandum from Chairmen Henry A. Waxman and Bart Stupak to Members of the House Committee on Energy and Commerce, *Coverage Denials for Pre-Existing Conditions in the Individual Health Insurance Market* (Oct. 12, 2010) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Memo-Coverage-Denials-Individual-Market-2010-10-12.pdf).

[5] Kaiser Family Foundation, *How Accessible is Health Insurance for Consumers in Less-Than-Perfect Health?* (June 2001) (online at www.kff.org/health-costs/report/how-accessible-is-individual-health-insurance-for/).

[6] Center for American Progress, *Graham-Cassidy ACA Repeal Bill Would Cause Huge Premium Increases for People with Pre-Existing Conditions* (Sept. 18, 2017) (online at www.americanprogress.org/issues/healthcare/news/2017/09/18/439091/graham-cassidy-aca-repeal-bill-cause-huge-premium-increases-people-pre-existing-conditions/).

[7] Consumer Reports, *How the Affordable Care Act Drove Down Personal Bankruptcy* (May 2010) (online at www.consumerreports.org/personal-bankruptcy/how-the-aca-drove-down-personal-bankruptcy/).

[8] 42 U.S.C. 300gg-1, 300gg-4(a).

[9] 42 U.S.C. § 300gg(a)(1), 300gg-4(b).

[10] 42 U.S.C. § 300gg-3.

[11] *National Federation of Independent Business v. Sebelius,* 567 U.S. 519 (2012).

[12] Pub. L. No. 115-97 (2017).

[13] Letter from Attorney General Jefferson B. Sessions III, Department of Justice, to The Honorable Paul Ryan, Speaker of the House (June 7, 2018) (online at www.justice.gov/file/1069806/download).

[14] State of California Department of Justice, Office of the Attorney General, *In Texas et al. v. United States et al., Attorney General Becerra Leads Coalition of 17 Attorneys General Opposing Texas' Latest Move to End the Affordable Care Act* (June 7, 2018) (online at www.oag.ca.gov/news/press-releases/texas-et-al-v-united-states-et-al-attorney-general-becerra-leads-coalition-17).

[15] The Commonwealth Fund, *Insuring the Healthy or Insuring the Sick? The Dilemma of Regulating the Individual Health Insurance Market* (Feb. 2005) (online at www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2005_feb_insuring_the_healthy_or_insuring_the_sick__the_dilemma_of_regulating_the_individual_health_insurance_771_turnbull_insuring_healthy_or_sick_findings_pdf.pdf).

[16] *If The Trump Administration Has Its Way, Insurance Coverage for Pre-Existing Conditions Could Cost You More*, CNN (June 14, 2018) (online at www.cnn.com/2018/06/14/opinions/trump-administrations-threat-to-coverage-for-preexisting-conditions-jost/index.html).