

# Health Care in Motion

Timely, Substantive Updates on Policy Shifts • Actionable Advocacy to Protect Health Care

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## To Confront the COVID-19 Crisis, We Need the Affordable Care Act

We are asking your organization to [join](#) an advocacy effort to insist that the Trump Administration and 18 Republican state attorneys general withdraw their Supreme Court challenge to the ACA, which jeopardizes Americans' access to health care in the midst of the COVID-19 pandemic. Please consider signing your organization onto our [advocacy letter](#), joining the hundreds of people that have already signed our [Change.org petition](#), and promoting the petition on social media. We need your help!

Over the last month, the COVID-19 crisis has forced the hands of policymakers at every level. While responses have [not been entirely consistent](#) throughout the country, the [executive](#), [legislative](#), and [judicial](#) branches in the 50 states have all sprung into action. As we have [described](#) in [our previous editions](#), Congress has funneled billions into the healthcare response across [three massive stimulus](#) packages. Among others, key provisions include increasing the federal share of Medicaid by [6.2%](#), along with a Medicaid [disenrollment freeze](#), and appropriating [\\$100 billion](#) in emergency funding for hospitals. Meanwhile, the Trump administration and federal agencies have rolled out a [slew of responses](#), including [emergency orders](#) that provide states with increased flexibility to use Medicaid in responding to the pandemic through [section 1135](#) and [section 1115](#) waivers.

Whatever the scope of the federal response to date, it's clear that these measures are just the beginning of the necessary health policy response to the pandemic. As [unemployment rolls burgeon](#), millions of Americans are losing their [employer-sponsored health coverage](#) along with their jobs. Additionally, at least [27.5 million people](#) were already without health insurance before the crisis began. Like the rest of the population, many of these uninsured people are likely to be exposed to COVID-19 and other health issues during this crisis. It's estimated that hospital treatment for COVID-19 could cost [up to \\$1.4 trillion](#) and that those without insurance could face bills nearing [\\$75,000 for a hospital stay](#). Unless action is taken, treatment for uninsured Americans will be borne by providers, putting [even more strain](#) on hospital ledgers, which have already seen lost revenue from cancelled elective procedures and increased costs associated with the crisis. Those with insurance aren't spared either, as health insurers may raise premiums by [as much as 40%](#) to recoup their unexpected COVID-19 losses.

The good news is that everyone seems to agree that something must be done for uninsured Americans—at least when it comes to COVID-19. The bad news is that the Trump administration is poised to move forward with an ill-conceived plan we're calling ["Medicare For Some with COVID-19."](#) Apparently the plan is to use the Medicare fee schedule and the \$100 billion set aside for hospitals in the [CARES Act](#) to [foot the bill](#) for any uninsured person's COVID-19 treatment.

There are plenty of unanswered questions about this plan, including how exactly COVID-19 treatment billings will be disaggregated from the cost of other treatments, who will qualify for the program, and what will happen if this money—that initially was intended to [give hospitals immediate access to funds](#) for things like purchasing medical supplies, PPE, and emergency construction—[runs out](#).

But perhaps the biggest question is why Trump is taking this path at all, rather than allowing the safety net already in place to fulfill its intended purposes. The Affordable Care Act (ACA), and its subsidized private insurance marketplaces and Medicaid expansion are the most effective tools to secure rapid and broad access to care for all Americans.

Today's *Health Care in Motion* focuses on the [continued](#) attempt of the Trump Administration and 18 Republican state attorneys general to sink the ACA – the best life raft we've got – in the *California v. Texas* litigation. We outline where the ACA is today, how it's being used effectively to respond to COVID-19, and how it's unfortunately still being undermined by some Republican-led states and the Trump Administration.

## The ACA Today

The Affordable Care Act has never been more popular than it is [today](#) (55% of Americans view it favorably while only 37% view it unfavorably). That makes sense, [because](#) as we face the COVID-19 crisis, we've never needed [its provisions more](#).

The ACA has undeniably increased insurance coverage and improved health outcomes in the United States. The law insures more than [22 million](#) Americans directly through its subsidized marketplaces and expanded Medicaid coverage (in the 37 expansion states). The ACA has also created significant gains in all private insurance plans, both within and outside of the marketplaces, by ensuring access for those with preexisting conditions. The percent of young adults with insurance has increased by over 15% since 2010 through the [dependent coverage provision](#). Racial, gender and ethnic gaps in coverage have [also narrowed](#). And the ACA has actually improved our health. A recent [Kaiser report](#) shows the ACA has improved care access, utilization, and outcomes; reduced negative social determinants of health like food insecurity, poverty, and home evictions; and has been correlated with an increase in healthy activities. The ACA has even saved states money, and even driven overall economic growth.

Of course it's not all sunshine and rainbows. The ACA has faced its share of setbacks and is a decidedly imperfect solution to the problems inherent in our health care system. The promise of a nationwide Medicaid expansion has not been realized thanks to the Supreme Court's decision in *NFIB v. Sebelius*, which invalidated the penalty for states opting out of expansion. As a result, among the uninsured are [over four million](#) people who are excluded from coverage benefits because they live in states that have not expanded Medicaid.

It's also worth noting that marketplace enrollment [decreased](#) by 1.2 million from 2016 to 2020, largely driven by [high premiums](#) for those who don't qualify for a subsidy, the repeal of the individual mandate, and other Trump Administration policies. The administration has spent a significant amount of the past three years [promoting non-ACA plans](#) that are exempt from many of the coverage requirements that are most crucial in this crisis. In particular, these plans are not required to cover fully any vaccine that might become available. These efforts, which have fortunately been [stymied in court](#), mean that some percentage of people who ostensibly have insurance might not be effectively insured when it comes to treating and preventing COVID-19.

## Effective Uses of the ACA in Responding to COVID-19

The Trump Administration, Congress and governors from both parties have acknowledged that health programs play an

important role in responding to the coronavirus pandemic and its economic repercussions. Among readily available options, the ACA and its Medicaid provisions are the best tools policymakers have. To date, the Trump Administration has [bolstered state Medicaid programs](#), Congress has appropriated [billions in new health care funding](#), and states have [removed access restrictions](#). [Twelve states](#) and the District of Columbia that run their own ACA marketplaces have [opted to allow](#) a special enrollment period to expand coverage in their states. The [insurance industry has encouraged](#) the federal government to do the same in the 32 states with federally-run marketplaces, so far to no avail.

The states and federal government are also coordinating on a [series of emergency changes to Medicaid](#) that are increasing flexibility and maximizing the funding available through the expansion and traditional programs. For example, Arizona—one of the states challenging the ACA—has suspended a variety of deductibles, copays, and fees in its Medicaid program. Other states like Utah—another plaintiff in the lawsuit—are [backing off](#), at least for the duration of the crisis, measures like the Medicaid [work requirement](#), which had been endlessly [promoted](#) by the Trump Administration.

Pertinent to the imminent [unemployment](#) crisis, the ACA provides an [opportunity](#) for the millions losing their jobs to gain coverage through the marketplaces, since loss of employer-sponsored coverage (and [sometimes a change in income](#) that affects subsidy eligibility or employer-sponsored insurance affordability) counts as a qualifying event. As a result of its provisions, millions not only receive access to COVID-19 testing (a [new](#) ACA essential health benefit under the [Families First Coronavirus Response Act](#)) and care, but also to treatment for other medical conditions, like diabetes and heart disease, that could expose them to a greater risk of complications. Similarly, for those who fall into a precarious financial situation, Medicaid expansion can provide a comprehensive health care safety net. By expanding the insured population, the ACA has also helped safeguard the financial solvency of front-line health care providers, which foot the bill when uninsured patients show up at their door.

The ACA also provides significant prevention and public health benefits in our fight against COVID-19. It requires health insurance plans to cover federally-approved preventative services like vaccines [free of charge](#). The [CARES Act](#) fast-tracks a future COVID-19 vaccine for immediate inclusion in preventative benefits guaranteed under the ACA, but—along with the testing provision—if the ACA were struck down this would be rendered moot. The ACA is the primary way that Congress can ensure the quick inoculation of the nation through no-cost access to a COVID-19 vaccine. Meanwhile, another ACA program, the [Prevention and Public Health Fund](#), provides critical financial support ([over 12%](#) of CDC's total program funding prior to funding cuts in the 2017 Tax Cuts and Jobs Act) to the CDC's infectious disease and local public health functions. Never has it been clearer that the ACA sits at the center of the nation's health care safety net.

## The Existential Threat to the ACA: *California v. Texas*

Nevertheless, the Trump Administration and 18 Republican state attorneys general [continue](#) their attempt to sink the best life raft we've got, the ACA. By continuing to litigate *California v. Texas*, these government representatives are placing ideology over the health and safety of the public.

As we've discussed in [previous posts](#), *California v. Texas* considers the constitutionality of the ACA's individual mandate, which the Supreme Court had previously upheld as an exercise of congressional taxing power in a 2012 case, *NFIB v. Sebelius*. Rather than confine their challenge to the individual mandate, the 18 state attorneys general also ask the Supreme Court to declare the entire ACA unconstitutional. The Trump Administration's Department of Justice, after initially arguing that the individual mandate is severable from the rest of the ACA, now supports the position that the whole law should be struck down as well.

The [lawsuit](#) advanced by the state attorneys general and the Trump Administration, imperils [22 million](#) Americans' health care coverage and the constellation of other benefits we've described above. If the Supreme Court were to invalidate the entire law, which several members of the Court have shown an eagerness in the past to do, it would destabilize the entire national health care system. It's hard to imagine anything more counterproductive in the face of a pandemic.

Congress could take the lead and [reinstate](#) a modest penalty for not having health insurance. That would effectively moot out the case and could be a bipartisan signal of national unity during the crisis. While they're at it they should appropriate more, and more clearly, for health care so that hospitals, community based health centers and other front line health providers have the resources they need in the short term.

But given the fact that Republican control of the Senate likely poses an insurmountable impediment to legislatively mooting the case, we're asking the state attorneys general to do the right thing and withdraw their challenge. Rather than attempting to invalidate the ACA, many of these government officials would do better by working to expand Medicaid in their own states, thereby providing health insurance to millions of their constituents. Continuing the partisan attacks on the ACA is the last thing we need in this crisis.

Finally, the Trump Administration has plenty to focus on aside from this lawsuit. First, the Administration could announce support for the actions we're calling on Congress to take, which would drastically increase their likelihood of coming to fruition. We're also [calling on](#) the Administration to [approve a special enrollment period](#) immediately so that uninsured people have the opportunity to sign up for insurance on the marketplaces. Rather than taking money already appropriated for hospitals and attempting to use it to fund coronavirus-related treatment for the uninsured, we should just get more people covered under the ACA. Not only would that help solve the short-term problem of uncompensated coronavirus care in the most efficient way, it would also help address the acute urgency people feel to get coverage today to keep them affordably insured in the long run. Ultimately, the Administration should drop the case.

**Please join our effort to protect the ACA by signing onto our [organizational letter](#), which asks the state AGs and the Department of Justice to withdraw their challenge in *California v. Texas*. Also be sure to sign and share our [Change.org grassroots petition](#).**

No matter what, we need to stop this challenge to the ACA so that the nation can focus on healing. We should be able to rely on the ACA to fulfill its intended role in this process, not worry about whether it will continue to exist at all. **Please join us in these efforts and spread the word.**

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