



**House Committee on Oversight and Reform
Hearing on “The Trump Administration's Attack on the ACA:
Reversal in Court Case Threatens Health Care for Millions of
Americans”**

July 10, 2019

Statement Submitted by
National Partnership for Women & Families
1875 Connecticut Avenue NW
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Washington, DC 20009

Dear Chairman Cummings, Ranking Member Jordan and Members of the Committee:

The National Partnership for Women & Families is a nonprofit, nonpartisan organization. For decades we have fought to advance the rights and well-being of America's women and families, including improving access to affordable, quality health care that meets women's needs and reduces disparities in health outcomes.

We commend the Chairman for holding today's critical hearing. As described below and in our enclosed fact sheet, if *Texas v. United States* succeeds, much is at stake for millions of women's health, well-being, and economic security.

Millions of women risk losing health insurance coverage. As a result of increased enrollment in private plans and under Medicaid expansion, 7.4 million women ages 19-64 have gained health coverage under the Affordable Care Act (ACA).¹ These coverage gains reduced the number of uninsured women by nearly half from 2010 to 2017.² Moreover, uninsured rates among women of color have declined significantly, with people of color disproportionately accounting for 45 percent of overall coverage gains.³ Despite these significant improvements, persistent coverage disparities still exist.⁴ Therefore, if courts repeal the ACA, coverage disparities will worsen and millions of women will lose their pathway to insurance.

More than half of the women and girls nationally (over 67 million) who have pre-existing conditions could be denied coverage or charged more.⁵ Before the ACA, women were routinely denied health coverage or charged a higher premium because the health conditions they experienced were considered pre-existing conditions, including diabetes, lupus, eating disorders, irregular periods, pregnancy, and Cesarean birth.⁶ In fact, one-third of women who had a health plan or had tried to purchase an individual plan had been turned down by an insurance company, charged higher premiums because of their health, or had a health problem excluded from coverage.⁷ The potential impact on women's health and financial security is staggering: the Center for American Progress estimates that a 40-year-old could see premiums rise by \$17,320 for pregnancy, \$28,660 for breast cancer, and \$20,450 for opioid addiction.⁸ Due to systemic racism and entrenched health disparities, women of color are more likely to have pre-existing conditions, making them especially vulnerable to unnecessary barriers to care, leading to worse health outcomes.

Millions of women could once again be subject to “gender rating” – a common pre-ACA practice in which insurance companies charged women higher premiums than men. This type of discrimination was widespread in the individual health insurance market.⁹ In fact 92 percent of the best-selling plans on the individual market charged women higher premiums than men of the same age and health status for identical health insurance, effectively treating being a woman as a preexisting condition.¹⁰

Millions of women could lose coverage for the essential health care they rely on at an affordable price. The ACA guarantees coverage of essential health benefits including key services for women such as maternity care, mental health and substance use disorder services, and prescription drugs. Before the ACA, it was nearly impossible, and very expensive, to find maternity coverage outside of employer-sponsored insurance. One study found that only 13 percent of plans included comprehensive maternity coverage.¹¹ By excluding these essential health benefits, women's health and financial

security are at risk, particularly for women of color, and for Black and Native women who are already facing a maternal mortality crisis.

Millions of women will no longer have guaranteed coverage of preventive care without cost-sharing. Under the ACA, women do not have to worry about paying out of pocket for services like breast and cervical cancer screenings; screening and counseling for interpersonal and domestic violence; contraceptives and contraceptive counseling, and many more. Eliminating cost-sharing for preventive services has increased access to services and has improved women's health.¹² If the ACA is overturned, insurance companies can return to charging women for these critically important services or denying coverage for particular types of preventive care. Studies have shown that even minimal cost sharing for preventive services deters women from obtaining the preventive care they need, which could worsen health outcomes and exacerbate health disparities for women of color.

The ACA has made sweeping changes to the entire U.S. health care system and repeal would cause far-reaching and damaging consequences for nearly every American – especially for millions of women. We applaud the House of Representatives for passing the **Protecting Americans with Preexisting Conditions Act** and the **Strengthening Health Care and Lowering Prescription Drug Costs Act**. We urge Congress to continue to take seriously the devastating impacts that a repeal of the ACA will have for women's health, well-being, and economic security.

If you have questions, please contact Sarah Coombs, senior health policy analyst, at scoombs@nationalpartnership.org or 202-986-2600.

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2. Kaiser Family Foundation. (2017). *Uninsured Rates for Nonelderly Adults by Gender*. Retrieved 8 July 2019, from <https://www.kff.org/uninsured/state-indicator/rate-by-gender/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>
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8. Center for American Progress. (2017, September). *Graham-Cassidy ACA Repeal Bill Would Cause Huge Premium Increases for People with Pre-Existing Conditions*. Retrieved 8 July 2019 from <https://www.americanprogress.org/issues/healthcare/news/2017/09/18/439091/graham-cassidy-aca-repeal-bill-cause-huge-premium-increases-people-pre-existing-conditions/>
9. National Women's Law Center. (2009). *Still Nowhere to Turn: Insurance Companies Treat Women Like a Pre-existing Condition*. Retrieved 8 July 2019, from <https://www.nwlc.org/sites/default/files/pdfs/stillnowheretoturn.pdf>
10. Garrett, D. (2012, March). *Turning to Fairness: Insurance Discrimination Against Women Today and the Affordable Care Act*. Retrieved 8 July 2019 from National Women's Law center website: https://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf
11. National Women's Law Center. (2009). *Still Nowhere to Turn: Insurance Companies Treat Women Like a Pre-existing Condition*. Retrieved 8 July 2019, from <https://www.nwlc.org/sites/default/files/pdfs/stillnowheretoturn.pdf>
12. Brief for National Women's Law Center et al. as Amici Curiae Supporting Respondents State of Texas v. United States of America & State of California (April 1, 2019) (No. 19-10011).

If *Texas v. United States* Succeeds, Millions of Women Will Lose Essential Health Care

Plaintiffs in *Texas v. United States* are seeking a judicial repeal of the Affordable Care Act (ACA), which would have a devastating impact on women's health coverage, for many reasons. In this issue brief, we focus on three specific consequences:

- » **More than 7.4 million women who gained coverage under the ACA would likely lose their health insurance.**
- » **More than 8.4 million women who buy coverage on their own, without help from an employer, would lose their current protections against insurance company discrimination.** They would once again have to pay more than men for the same health insurance. Survivors of breast cancer and women with heavy menstrual cycles would once again be classified as suffering from preexisting conditions and therefore charged substantially more for insurance or flatly denied any ability to purchase coverage. As was true before the ACA, much of the country might not have a single plan in the individual market that offers maternity care coverage, for any price.
- » **More than 58 million women who receive health benefits at work — three out of every five adult women under the age of 65 — would no longer be guaranteed preventive**

health services free from deductibles and copayments, including contraception, maternity care, and screenings for breast and cervical cancer. They would also be at heightened risk of medical bankruptcy because insurers could once again shirk catastrophic health care costs by imposing annual or lifetime caps on all covered services.

Millions of Women Would Lose Health Insurance Coverage

According to estimates from the Urban Institute, more than 7.4 million women gained health coverage under the ACA (Table 1).¹ If courts repeal the ACA, these women would lose their pathway to insurance.²

More than 7.4 million women who gained coverage under the ACA would likely lose their health insurance.

Table 1. Women who Gained Coverage Under the ACA and Could Become Uninsured if Federal Judges Repeal the Law, by State (Plaintiff States Highlighted in Yellow)

State	Women who gained coverage under the ACA	State	Women who gained coverage under the ACA
Alabama	77,000	Montana	19,000
Alaska	<11,000	Nebraska	29,000
Arizona	152,000	Nevada	99,000
Arkansas	106,000	New Hampshire	25,000
California	1,504,000	New Jersey	150,000
Colorado	147,000	New Mexico	75,000
Connecticut	42,000	New York	359,000
Delaware	-	North Carolina	193,000
District of Columbia	-	North Dakota	-
Florida	588,000	Ohio	269,000
Georgia	214,000	Oklahoma	62,000
Hawaii	-	Oregon	156,000
Idaho	38,000	Pennsylvania	210,000
Illinois	356,000	Rhode Island	-
Indiana	127,000	South Carolina	114,000
Iowa	56,000	South Dakota	-
Kansas	49,000	Tennessee	100,000
Kentucky	175,000	Texas	631,000
Louisiana	109,000	Utah	45,000
Maine	<10,000	Vermont	-
Maryland	111,000	Virginia	106,000
Massachusetts	31,000	Washington	210,000
Michigan	245,000	West Virginia	77,000
Minnesota	79,000	Wisconsin	72,000
Mississippi	60,000	Wyoming	-
Missouri	90,000	United States	7,471,000

Source: Bowen Garrett and Anuj Gangopadhyaya, *Who Gained Health Insurance Coverage under the ACA, and Where Do They Live?* (Washington, DC: Urban Institute, December 2016), <https://www.urban.org/sites/default/files/publication/86761/2001041-who-gained-health-insurance-coverage-under-the-aca-and-where-do-they-live.pdf>.

Note: States without an estimate do not have large enough sample sizes in the applicable survey to provide precise estimates.

Insurance Companies Could Once Again Discriminate against Women Who Buy Their Own Coverage in the Individual Market

Today, more than 8.4 million women buy their own health coverage in the individual market, without help from an employer (Table 2). The ACA guarantees these women critically important consumer protections.

Insurance companies are forbidden from excluding benefits, raising premiums, or flatly denying coverage to women with preexisting conditions, a classification that, before the ACA, included not only women with current chronic conditions but also survivors of breast cancer. Due to systemic racism and entrenched health disparities, women of color are at heightened risk of experiencing health problems, but women and girls in all walks of life now rely on this ACA safeguard to assure access to health insurance. Altogether, more than half of all women and girls in the U.S. — 67 million people — have preexisting conditions and would be placed at risk if the ACA is repealed.³

Insurance companies must cover all essential health benefits, including maternity care, prescription drugs, and mental health care — benefits that were often unavailable in the individual market before the ACA.⁴ By excluding these benefits, insurers deterred women who needed health care from signing up. As one particularly shocking example, not a single plan in the pre-ACA individual market in 11 states' capital cities offered women maternity care coverage, for any price.⁵

Insurance companies cannot charge women more than men simply because of their sex. By contrast, before the ACA, 92% of the best-selling plans on the individual market charged higher premiums to women than to men of the same age and health status for the identical health insurance, effectively treating being female as a preexisting condition. This de facto “women’s tax” increased premiums by as much as 81%.⁶

All of these formerly common practices could again harm millions of women if federal judges throw out the ACA. Of the women who would lose these protections, 3.3 million live in states that are plaintiffs in *Texas v. United States* (Table 2). They represent nearly two out of every five women (39%) in America who would have these safeguards ripped away. Their own elected officials have mounted an effort to expose these women once again to the types of discrimination and abusive coverage practices that typified the individual insurance industry before the ACA.

Formerly common practices could again harm millions of women if federal judges throw out the ACA.

**Table 2. Women Ages 19-64 Who Have Individual Market Coverage with Consumer Protections, by State: 2017
(Plaintiff States Highlighted in Yellow)**

State	Number of individually insured women with consumer protections	State	Number of individually insured women with consumer protections
Alabama	126,500	Montana	36,400
Alaska	10,400	Nebraska	58,400
Arizona	157,500	Nevada	63,400
Arkansas	75,800	New Hampshire	30,700
California	1,174,700	New Jersey	205,300
Colorado	165,200	New Mexico	38,200
Connecticut	84,000	New York	437,800
Delaware	20,800	North Carolina	301,200
District of Columbia	17,100	North Dakota	23,700
Florida	853,800	Ohio	225,600
Georgia	284,200	Oklahoma	91,800
Hawaii	24,100	Oregon	117,200
Idaho	63,900	Pennsylvania	304,600
Illinois	302,700	Rhode Island	24,300
Indiana	146,800	South Carolina	136,400
Iowa	74,300	South Dakota	28,900
Kansas	73,700	Tennessee	167,200
Kentucky	75,800	Texas	690,300
Louisiana	110,800	Utah	98,200
Maine	35,800	Vermont	13,700
Maryland	134,600	Virginia	235,100
Massachusetts	145,400	Washington	182,600
Michigan	220,400	West Virginia	29,100
Minnesota	120,800	Wisconsin	151,800
Mississippi	72,600	Wyoming	14,700
Missouri	163,800	United States	8,442,000

Source: Kaiser Family Foundation, "Health Insurance Coverage of Women 19-64," <https://www.kff.org/other/state-indicator/nonelderly-adult-women/?current-Timeframe=o&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D>. KFF estimates are based on the U.S. Census Bureau's American Community Survey, 2017.

Women with Job-Based Insurance Would Lose Coverage of Essential Preventive Care and Protection against Medical Bankruptcies

More than 58 million women now receive health insurance through an employer (Table 3). Under the ACA, they are guaranteed coverage of preventive care, without any deductible, copayment, or coinsurance. These services include the following:

- » Screening for breast cancer, cervical cancer, human papillomavirus, sexually transmitted diseases, and interpersonal and domestic violence.
- » Contraception and contraception counseling.
- » BRCA gene counseling and genetic screening for women at risk of cancer.
- » Services for women who are pregnant, may become pregnant, or recently gave birth, such as screening for gestational diabetes and urinary tract infections, folic acid supplements, and breastfeeding support and counseling.
- » Screening for osteoporosis for women over age 60.
- » Well-woman visits.^{7,8,9}

If the plaintiffs in *Texas v. United States* succeed, insurance companies can return to charging women for these critically important services and preventing many from obtaining care, especially among women of color. Insurers could even deny coverage altogether for particular preventive services.

The ACA also forbids job-based plans from imposing annual or lifetime limits on paid claims. Before the ACA, such limits were common. Someone hit by a car or contracting a serious disease could see insurance payments end before medical bills were fully paid. Medical bankruptcies were widespread, including for people with insurance. Once the ACA passed, total bankruptcies, from all causes, fell by 50%.¹⁰ If the plaintiffs prevail in *Texas v. United States*, more than 58 million women in America who receive job-based health insurance would lose the financial security guaranteed by the ACA.

Nationally, three out of every five adult women under age 65 now receive job-based health insurance and so benefit from these safeguards. In many states that are plaintiffs in *Texas v. United States* — Indiana, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Utah, and Wyoming — the proportion is even higher.

If the plaintiffs prevail in *Texas v. United States*, more than **58 million** women in America who receive job-based health insurance would lose the financial security guaranteed by the ACA.

**Table 3. Women Ages 19-64 with Job-Based Health Insurance Who Could Lose Access to Preventive Services and Protection against Medical Bankruptcy if the ACA Is Repealed, by State: 2017
(Plaintiff States Highlighted in Yellow)**

State	Women with job-based health insurance		State	Women with job-based health insurance	
	Number	Percentage of all women ages 19-64		Number	Percentage of all women ages 19-64
Alabama	849,300	58%	Montana	169,500	56%
Alaska	118,700	55%	Nebraska	360,200	66%
Arizona	1,123,100	56%	Nevada	527,600	59%
Arkansas	469,200	54%	New Hampshire	285,900	70%
California	6,686,600	56%	New Jersey	1,811,800	66%
Colorado	1,023,300	60%	New Mexico	280,500	47%
Connecticut	699,900	65%	New York	3,684,500	60%
Delaware	191,700	67%	North Carolina	1,808,900	58%
District of Columbia	153,200	65%	North Dakota	145,300	68%
Florida	3,203,200	52%	Ohio	2,166,100	63%
Georgia	1,882,700	59%	Oklahoma	648,000	57%
Hawaii	275,000	68%	Oregon	717,100	58%
Idaho	276,400	57%	Pennsylvania	2,426,700	64%
Illinois	2,463,000	64%	Rhode Island	196,100	61%
Indiana	1,254,300	64%	South Carolina	853,100	57%
Iowa	607,800	68%	South Dakota	152,700	64%
Kansas	553,800	67%	Tennessee	1,179,000	58%
Kentucky	743,600	57%	Texas	4,785,400	57%
Louisiana	749,500	53%	Utah	597,600	68%
Maine	246,200	62%	Vermont	107,500	58%
Maryland	1,259,100	67%	Virginia	1,639,700	64%
Massachusetts	1,373,700	65%	Washington	1,384,800	62%
Michigan	1,852,200	62%	West Virginia	279,900	54%
Minnesota	1,120,400	68%	Wisconsin	1,153,400	68%
Mississippi	480,200	54%	Wyoming	99,300	61%
Missouri	1,140,400	63%	United States	58,256,800	60%

Source: Kaiser Family Foundation, "Health Insurance Coverage of Women 19-64," <https://www.kff.org/other/state-indicator/nonelderly-adult-women/?current-Timeframe=o&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D>. KFF estimates are based on the U.S. Census Bureau's American Community Survey, 2017.

Conclusion

Thanks to the ACA, millions of women receive critically important health care services and consumer protections. Many of these women's elected representatives have brought litigation that attempts to take away these services and to repeal those protections. The lawsuit threatens to leave millions of women without essential benefits they receive today, once again exposing them to discrimination by insurance companies. Many women would lose their health insurance entirely, and many more would suffer grave harm if plaintiffs prevail in *Texas v. United States*.

Endnotes

¹ Bowen Garrett and Anuj Gangopadhyaya, *Who Gained Health Insurance Coverage under the ACA, and Where Do They Live?* (Washington, DC: Urban Institute, December 2016), <https://www.urban.org/sites/default/files/publication/86761/2001041-who-gained-health-insurance-coverage-under-the-aca-and-where-do-they-live.pdf>.

² Based on more recent Urban Institute research, the number of women losing coverage is likely to be slightly higher. According to those more recent estimates, 19.9 million people would become uninsured if the ACA is repealed. Linda J. Blumberg, Matthew Buettgens, John Holahan, and Clare Wang Pan, *State-by-State Estimates of the Coverage and Funding Consequences of Full Repeal of the ACA* (Washington, DC: Urban Institute, March 2019), https://www.urban.org/sites/default/files/publication/100000/repeal_of_the_aca_by_state_0.pdf. According to Garrett and Gangopadhyaya, 39% of those who gained coverage under the ACA were adult women. If that same percentage applies to the number of people who lose coverage under repeal, 7.6 million women will become uninsured.

³ Center for American Progress and National Partnership for Women & Families. "Moving Backward: Efforts to Undo Pre-Existing Condition Protections Put Millions of Women and Girls at Risk." June 2018. <http://www.nationalpartnership.org/our-work/resources/health-care/aca-pre-ex-protections-women-girls.pdf>.

⁴ Gary Claxton, Karen Pollitz, Ashley Semanskee, and Larry Levitt. "Would States Eliminate Key Benefits if AHCA Waivers

are Enacted?" (San Francisco, CA: Kaiser Family Foundation, June 2017), <http://files.kff.org/attachment/Issue-Brief-Would-States-Eliminate-Key-Benefits-if-AHCA-Waivers-are-Enacted>.

⁵ Danielle Garrett, *Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act* (Washington, DC: National Women's Law Center, March 2012), https://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf.

⁶ Garrett, *Insurance Discrimination*.

⁷ U.S. Centers for Medicare & Medicaid Services, "Preventive Care Benefits for Women," HealthCare.gov, <https://www.healthcare.gov/preventive-care-women/>.

⁸ U.S. Department of Health and Human Services, Health Resources and Services Administration, "Women's Preventive Services Guidelines," last reviewed September 2018, <https://www.hrsa.gov/womens-guidelines/index.html>.

⁹ National Conference of State Legislators. "Preventive Services Covered under the Affordable Care Act," February 2014, <http://www.ncsl.org/research/health/american-health-benefit-exchanges-b.aspx>.

¹⁰ Allen St. John, "How the Affordable Care Act Drove Down Personal Bankruptcy: Expanded Health Insurance Helped Cut the Number of Filings by Half," *Consumer Reports*, May 2, 2017, <https://www.consumerreports.org/personal-bankruptcy/how-the-aca-drove-down-personal-bankruptcy/>.

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