

2021: A Pivotal Year for the Affordable Care Act and Health Care

What's at Stake for Wisconsin

The fate of the Affordable Care Act (ACA) has become a prominent issue in the November 2020 elections. Attention to the law has been magnified not only by the COVID-19 pandemic, but also by the death of Supreme Court Justice Ruth Bader Ginsburg. The proposed replacement of Justice Ginsburg with a conservative judge significantly increases the chance that the Court will strike down key parts of the ACA when it rules on a challenge to the law that the Court will consider in mid-November.

The upcoming elections and the pending litigation put the direction of our nation's health care policy at a crossroads. One potential outcome is that the next President and next Congress will build upon the current law to further reduce the number of uninsured Americans and help them get the health care they need. Alternatively, the current President might keep chipping away at the law or the Supreme Court could strike it down, and federal lawmakers might be unable to pass any plan to replace it.

The stakes for the upcoming decisions are tremendous. Without the ACA in place an estimated 20 million more people would be uninsured according to a pre-pandemic [analysis](#) by the Urban Institute. Millions of parents would be worrying about health coverage for their adult children, and tens of millions with pre-existing conditions might not have the coverage they need. Further, much of the coverage loss would inequitably impact Black and Latinx residents, who have seen higher coverage rates since implementation of the ACA.

Despite the law's successes and its increasing popularity, President Trump has been actively undermining the ACA since his election. The executive branch is backing the lawsuit challenging the ACA's constitutionality and has taken many administrative actions that weaken the law.

The changes implemented by the Trump administration and others enacted by Congress have taken a toll. The most notable changes include shortening the open-enrollment period, sharply cutting outreach and enrollment assistance, eliminating federal funding for cost-sharing reductions, and repealing the requirement that everyone have health insurance.

This report examines how the ACA has performed under a hostile administration and considers the

potential impact in Wisconsin from efforts to strike down or weaken the law. It also highlights the resiliency of the ACA and its importance in Wisconsin, especially in rural areas of the state.

Because the most imminent threats relate to the coverage of preexisting conditions and to the risk that many insurance companies will stop participating in the Marketplace, the report summarizes:

- The background and structure of the Marketplace, and the intertwined provisions that ensure coverage of preexisting conditions;
- The enrollment trend throughout both the Obama and Trump administrations;
- What Wisconsinites have to lose if the Marketplace significantly deteriorates or if the ACA is overturned by the courts; and
- Options for state lawmakers to help protect portions of the ACA and strengthen the law's implementation in Wisconsin.

Background and Structure of the ACA Health Insurance Marketplace

Health Insurance Marketplaces are a key component of the Affordable Care Act. Each state is required by the ACA to have a Marketplace, which is an online price comparison website where consumers can review and buy health insurance plans that provide minimum essential coverage. Within the Marketplace, insurers cannot refuse to cover someone because they have a prior health condition and can only charge someone more based on three distinct factors: their location, age, and whether they smoke.

Like the majority of states, Wisconsin uses the federal Marketplace, through healthcare.gov. The federal government determines how and when people can sign up for coverage, and what kinds of plans can be sold on the Marketplace.

The strong majority of people with Marketplace plans receive financial assistance to help cover insurance costs. People who make less than four times the Federal Poverty Level (FPL), which is about \$49,000 for one person or \$83,000 for a family of three, may qualify for financial assistance through the Marketplace. That assistance includes reduced premiums via tax credits. People whose incomes are between 100 and 250 percent of FPL (or just under \$52,000 for a family of three) can get extra help paying for out-of-pocket costs like copays and deductibles if they choose certain insurance plans offering extra discounts.

The Marketplace is one of the most politically moderate parts of the health law. It is a competitive market-based approach that is coupled with subsidies and federal standards to ensure that quality insurance plans will be affordable, without discriminating against people with preexisting conditions. It is also the part most vulnerable to negative actions taken by the federal administration.

How the ACA Protects Insurance Coverage for People with Pre-Existing Conditions

Beginning in 2014, the ACA put an end to the practices of denying coverage to people who have pre-existing conditions and charging sick consumers more for their coverage. The ACA also includes a number of other provisions that help ensure people who have pre-existing conditions are able to get the care they need. Those interrelated provisions include the following:

- Requiring coverage of a basic set of health benefits (referred to as essential health benefits), including prescription drugs, mental health care, hospitalization, and maternity care.
- Prohibiting annual and lifetime caps on coverage, and requiring insurance carriers to give people the option to renew their plan regardless of their health status.
- Creating a subsidized individual insurance Marketplace that has enough participants to be able to offer quality, affordable options.
- Applying federal consumer protections to employer-sponsored insurance plans, including those that are exempt from state regulation.

Working together, these measures have been a very effective and extremely popular part of the ACA because they allow people to purchase affordable, comprehensive health insurance regardless of their health status. However, the protections for coverage of pre-existing conditions are probably the most at risk parts of the ACA if the U.S. Supreme Court rules that some portions of the law are unconstitutional.

Strong Insurance Coverage Gains After Key ACA Components Were Implemented

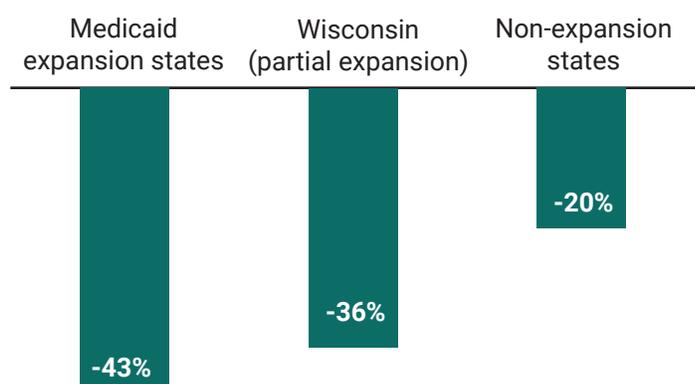
More than 20 million people in the US have gained health insurance coverage thanks to the Affordable Care Act. In 2013, prior to full implementation of the ACA, about 13% of the population was uninsured. Over the next six years the uninsured rate fell to 9.2%.

Expanding eligibility for Medicaid was one pillar of the ACA’s effort to provide coverage to millions of uninsured Americans. Medicaid would offer health insurance to low-income adults, including parents, and the Marketplace would allow other uninsured people to buy health insurance, usually at a significantly reduced price. However, a Supreme Court ruling left the decision to expand Medicaid up to each state, and all but twelve states have exercised that option.

As the graph illustrates, states that chose to expand Medicaid increased the portion of people with insurance by more than twice as much as the states that refused to expand health insurance through Medicaid. Wisconsin is in a category of its own, as the one state that partially expanded Medicaid eligibility, but not enough to qualify for the large increase in federal cost-sharing for full expansion states. Wisconsin’s partial expansion has sharply reduced the number of people without insurance, but significantly less than in the full expansion states, and the cost to state taxpayers since 2014 has been more than \$1 billion higher than the cost of full expansion.

States that Expanded Medicaid Have Bigger Declines in the Number of People who Lack Health Insurance

Percent change in number of uninsured, 2013 to 2019.



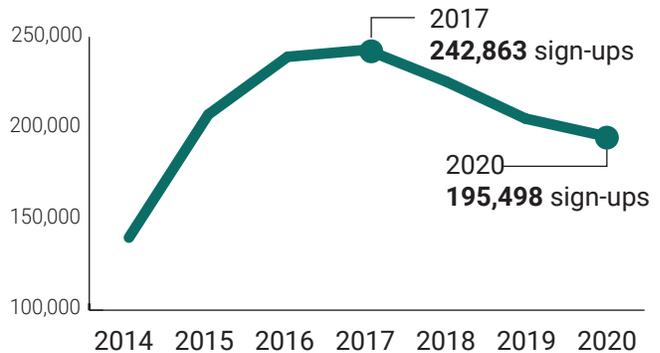
Source: American Community Survey www.kidsforward.net

Progress Stalled in Recent Years

At the outset, the ACA Marketplace struggled with awareness, understanding of health insurance, and technical issues. Despite the slow start, Marketplace enrollment in Wisconsin increased each year under the Obama administration. It rose from 140,000 in 2014 to 243,000 in 2017. However, under the Trump administration, enrollment has decreased each year. The graph below shows our state's enrollment during the last four enrollment periods of Obama's presidency (2014-17) and the first three of the Trump administration (2018-20). During the Trump administration, enrollment in Wisconsin declined by nearly 50,000. Repeated repeal attempts, lawsuits, deep cuts to outreach funding, less time to sign up, and general confusion are all probable contributors to the decreased enrollment.

Following Yearly Increases, ACA Enrollment Decreased by 47,000 from 2017 to 2020

Marketplace sign-ups in Wisconsin during open enrollment periods 2014 to 2020.



Source: Analysis of HHS Marketplace enrollment data www.kidsforward.net

Despite numerous attempts by Congress and the Trump administration to rollback and undermine the ACA, 195,000 Wisconsinites signed up for Marketplace plans in 2020. That's a decrease of about 5 percent from the previous year. In light of the many policy changes, including sharp cuts in advertising and outreach support and in the length of the enrollment period, thankfully the percentage drop is smaller than many people feared. The decrease from 2019 to 2020 of about 10,000 fewer state residents who signed up for Marketplace coverage should concern policymakers; however, the steady decline from the peak in 2017 should be more alarming.

There are fewer people enrolled in the 2020 Marketplace, but the vast majority of Wisconsinites served by the Marketplace have insurance options from more than one carrier. All but two Wisconsin counties have at least two insurance carriers offering multiple plans through the Marketplace, and the majority of counties in Wisconsin have three or more carriers offering plans.

The continuation of a relatively strong Marketplace is especially important in Wisconsin because state lawmakers sharply reduced eligibility for BadgerCare in 2014, based on the rationale that adults over the poverty level could purchase affordable, subsidized health insurance plans through the Marketplace. Roughly 60,000 adults lost their health insurance coverage because of that decision.

Wisconsinites Have a Lot at Stake if the Marketplace Collapses

Let's look at what an end to that source of health insurance coverage would mean for the Wisconsinites who now rely on it. The most recent federal statistics on Marketplace participation show the following:

- More than 195,000 Wisconsinites signed up for Marketplace insurance plans for the year 2020.
- About 166,000 of those participants, or 85 percent, are receiving premium tax credits

that substantially reduce the net cost of the premiums.

- Because premiums increased, the average premium tax credit in Wisconsin increased as well. The average premium tax credit is \$569 per month. The average monthly premium for people who received tax credits was \$173.

Without the federal subsidies, the average premium for Marketplace plans would be more than three times higher in 2020. Although Marketplace plans don't cover a large percentage of Wisconsinites, they are a key reason why the number of uninsured people in our state dropped by more than 200,000 from 2013 to 2016. In addition, Marketplace plans provide people with access to health care that includes important behavioral health services, maternity care, and free preventative care.

A Ruling Striking Down the ACA Would Have Sweeping Effects on Health Care in Wisconsin

Wisconsin and the rest of the country have a lot to lose if the ACA were eliminated without a comparable replacement. According to [a 2017 analysis](#) by the Congressional Budget Office, repealing the ACA without any replacement would result in 32 million more uninsured Americans by 2026.

Aside from providing health insurance to 195,000 Wisconsinites through the Marketplace, the ACA includes many consumer protections and reforms that impact people covered by the types of health plans that most Wisconsinites count on. Many of these protections are vulnerable as well. For example:

- Almost all insurance plans must cover treatment for people regardless of their health status. About one in five non-elderly Wisconsinites have a pre-existing health condition; that's [883,000 people](#) – enough to fill the seats in Lambeau Field ten times over.
- The ACA requires that most insurance plans cover care people may need, like hospitalization, mental health & substance use, emergency services, and prescription drugs.
- The law allows kids to stay on their parents' health plans through age 26, which has benefited more than [41,000 young adults in Wisconsin](#).
- The ACA prohibits annual and lifetime limits on policies, so all Wisconsinites with employer plans and those on the Marketplace now have access to the health services they need.
- The ACA has helped to increase insurance coverage rates for people of color – particularly in Medicaid expansion states.
- Private health plans, such as employer-sponsored plans, are required to cover a number of preventive care services for adults and children without any cost-sharing. In 2018, about [3.2 million](#) Wisconsinites were covered through their employer.
- Unlike short-term health insurance and other non-ACA regulated plans, the law requires insurance companies to spend 80-85% of their premium dollars on medical care and quality improvement. This protects consumers by ensuring that their premiums are

paying for their health care.

The ACA Built on our Current System, Despite Its Fundamental Flaws

The coronavirus pandemic has caused widespread unemployment throughout the world, but many in the US are losing more than their job and income. They are also losing their health insurance at a time when coverage is critical. According to an [analysis](#) done by the Economic Policy Institute (EPI), about 16 million people across the country lost their source of health coverage, and at one of the worst times.

In their analysis, they estimated that 264,000 Wisconsinites lost their employer-sponsored health insurance between March 15 and May 9, 2020. If those people made up one city, it would be the second largest city in the state, a city a little larger than Madison. These people are cancer patients, farmers managing their diabetes, construction workers with mental health challenges, as well as comparatively healthy people. All of them are at risk of contracting COVID-19. This is unacceptable in the richest country in the world.

Health insurance is very often tied to employment in the US. As a result, there are vast differences in how much people pay for health insurance, which doctors they can see, and what they have to do to receive care. This creates an uneven system and leaves too many with inadequate or no health coverage. In the US, about 58 percent of the non-elderly population (under 65) get their health insurance through their employers. This rate is even higher in Wisconsin; about two out of three non-elderly Wisconsinites have employer-sponsored health insurance, which is the second-highest reliance on employer coverage in the nation. Tying health insurance to employment makes our state particularly vulnerable, especially during public health crises that create widespread unemployment.

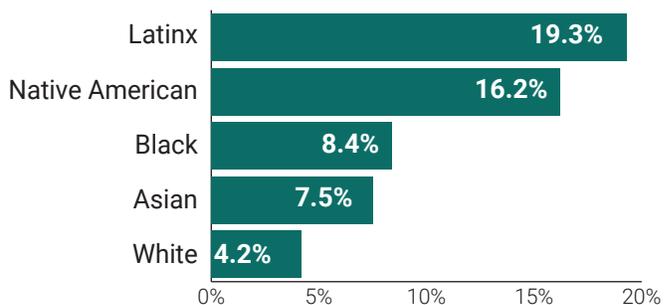
This patchwork system perpetuates and accentuates deep inequities in who has access to health insurance and affordable health care. Because of long-term, systemic employment and economic discrimination, as well as decisions by policymakers, Black and brown people have higher rates of unemployment and under-employment than white people and are more likely to have lower paying jobs with employers who do not offer health coverage. In 2018 40% of Black residents and about 27% of Latinx and Native American residents had incomes at or below 125% of the federal poverty level, compared to just 12% of white residents.

The Impact of the ACA on People of Color

Notwithstanding the shortcomings of building upon a system that relies heavily on employer-sponsored insurance, the ACA has expanded coverage for millions of Americans, and the number of people of color who are insured has increased significantly. In Wisconsin, Latinx, Native American, and Black residents saw large gains in insurance coverage since 2013. However, even with these gains, Black

Wisconsin's Stark Racial Disparities in Access to Health Insurance Persist in 2019

Percentage of people by race without insurance in Wisconsin.



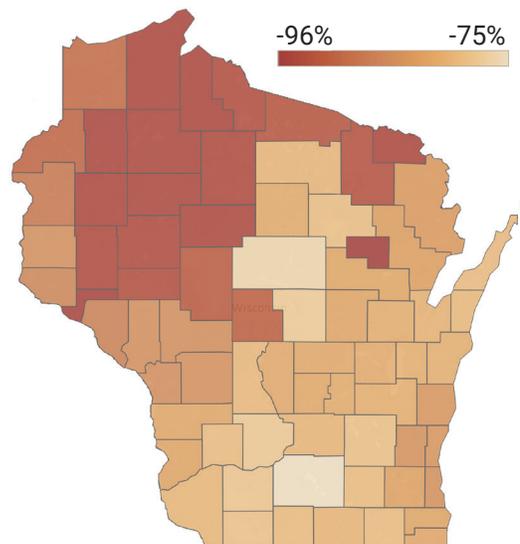
Source: American Community Survey www.kidsforward.net

and brown Wisconsinites still have lower insurance rates than white residents. The chart below, which is derived from the most recent census data, illustrates that 4% of white people are uninsured, compared to 8% of Black people and nearly one in five Latinx and Native American residents of the same age. Generally speaking, states that [expanded Medicaid](#) have seen greater increases in insurance coverage rates for people of color, so a full expansion of Medicaid in Wisconsin would probably further reduce these coverage inequities.

Although the federal government collects detailed data on income and age for people who buy coverage on the ACA Marketplace, they fail to collect adequate Marketplace enrollment data related to race and ethnicity, so researchers, advocates, and policymakers are unable to accurately assess who is and is not covered by ACA Marketplace plans. However, because there are such stark disparities in access to coverage, outreach efforts should prioritize engaging communities of color to help decrease coverage disparities.

ACA Tax Credits Reduce Monthly Premiums, Particularly for Rural Counties

Average percent that monthly premiums were reduced for people receiving tax credits for health insurance during the 2020 open enrollment period.



Source: Analysis of HHS Marketplace Data
www.kidsforward.net

ACA Marketplace Plans Provide Crucial Coverage in Rural Wisconsin

Marketplace coverage is especially important in Wisconsin's more rural counties because more workers in those counties are self-employed or work for small employers who don't offer affordable insurance plans. According to a 2017 report by the Center on Budget and Policy Priorities (CBPP), a larger percentage of Marketplace consumers in Wisconsin live in rural areas, compared to the average of all of the 38 states that use the federally run Marketplace.

Among Wisconsinites who signed up for Marketplace plans this year, 85 percent receive Advance Premium Tax Credits (APTC), which significantly lower their monthly premium costs. Those tax credits are higher for lower income households and for people in areas where insurance is more expensive, such as many rural areas. Federal actions threatening the stability of the Marketplace have increased premiums across the country, but the structure of the ACA has in large part insulated consumers from those increases. The map shows the average percent reduction of premiums for each county in 2019 and illustrates that ACA tax credits are especially important in higher-cost areas.

Lower-Income Wisconsinites Impacted the Most by Enrollment Declines

During the past few years, enrollment decreases have been more concentrated among people with lower incomes. The chart below shows the changes in enrollment by income from 2016 to 2020. During that period nearly 40,000 people who would have been eligible for cost-sharing reductions

have left the Marketplace. Enrollment has gone down for lower-income residents between 100-200 percent of the federal poverty level (FPL). Enrollment has also declined among those who are not eligible for tax credits, including people above 400 percent of FPL and people who are ineligible due to their immigration status regardless of income.

Threats to the future of the Affordable Care Act

Despite increasing public support for the health law and a once-in-a-generation pandemic, the fate of the ACA is still uncertain. Congress failed to repeal and replace the ACA, but opponents have been able to undermine the health law through administrative actions, including cutting funding for outreach and enrollment, increasing costs, and making it easier to purchase unregulated health insurance that does not have to cover basic health care needs. According to a recently released congressional report, nearly 100,000 people in Wisconsin had one such short-term health insurance policy. Siphoning off younger, healthier people increases costs for everyone else who needs to remain in the Marketplace because of its consumer protections.

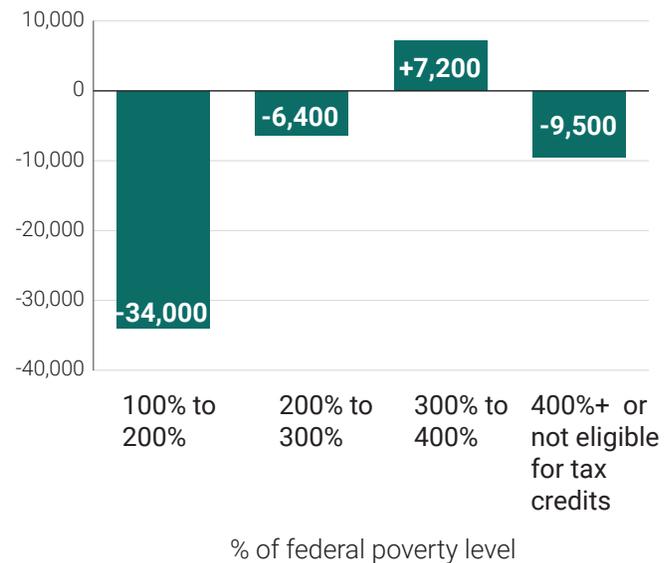
Once again the US Supreme Court holds the fate of the Affordable Care Act in its hands. The pending case, *Texas v. US*, seeks to repeal the entire health care law because Congress in 2017 removed the monetary penalty attached to the requirement that people have health insurance coverage. In a departure from standard government practices, the Trump administration’s Department of Justice has refused to defend the ACA and instead joined Texas and the 17 other states asking the court to overturn the ACA.

A court ruling striking down the ACA would not only impact the nearly 200,000 people insured through the ACA Marketplace, but would also affect people who have insurance through their employers. It would take us back to the days when even if you had employer-sponsored coverage, they could bar coverage for treatment of “pre-existing conditions” for a year or more. It would also bring back “job lock,” where people were forced to stay in jobs for fear that their health conditions might not be covered if they switched jobs or started a business. These are only two of hundreds of examples of how the ACA has improved the health insurance landscape. Wisconsin and the rest of the country have a tremendous amount at stake.

Options for State Policymakers to Build on the ACA

Marketplace Participation Dropped Most among Wisconsin Residents with Lower Incomes

Change in number of people by thousands enrolled by poverty level, 2016 to 2020.



Source: Analysis of US HHS Marketplace Data
www.kidsforward.net

Although state lawmakers have a few options for protecting portions of the ACA and strengthening its implementation, a number of important objectives of the ACA can only be accomplished through federal law.

For example, even though many state lawmakers have promised to protect coverage of pre-existing conditions by incorporating language to that effect in state statutes, federal law precludes states from imposing requirements on private sector employers who self-insure. In Wisconsin, those corporations account for most of the health insurance offered by private sector employers. Incorporating the ACA's consumer protections into state law could help some Wisconsinites, such as those who get insurance through employers that do not self-insure, but it would have far less benefit than many policymakers seem to think.

Cost considerations also create a very substantial barrier to state efforts to replicate the federal protection of coverage for preexisting conditions. Applying strong consumer protections, such as those included in the ACA, to private insurance plans only works when the plans cover large numbers of people, including many who are relatively healthy. Without large subsidies, equivalent to those provided by the ACA for Marketplace plans, the private plans sold on the individual market would not attract enough healthy people to be economically viable. If the ACA is repealed or struck down by the courts, a state cannot restore the consumer protections for people buying individual insurance plans unless the state can afford to replicate the subsidies for private plans contained in the ACA. It is highly unlikely Wisconsin would be able to do that.

Even though many key parts of the ACA cannot be replaced at the state level, Wisconsin lawmakers do have a few options for protecting parts of it from harmful administrative changes at the federal level, or for improving the law's implementation and building upon it. For example, state policymakers can:

- **Increase access to affordable care by expanding BadgerCare eligibility** – Increasing the income limit for BadgerCare eligibility to 138% of the federal poverty level (FPL), from 100% of FPL now, would give an estimated 95,000 more adults quality, affordable health insurance. It would also save state taxpayers nearly \$300 million per year by qualifying our state for a large increase in federal funding.
- **Limit short-term plans** – Wisconsin should ban or at least regulate short-term insurance plans, which offer little to no consumer protections and undermine the stability of the ACA Marketplace.
- **Explore the option of state administration of the federally-created Marketplace for individual insurance** – State lawmakers should carefully examine the costs and benefits of having the state assume responsibility for administering the ACA Marketplace in Wisconsin. Potential benefits include the option of lengthening the open enrollment period, the possibility of reducing user fees, and the ability to increase coordination with BadgerCare.
- **Create a BadgerCare buy-in option in the individual marketplace** – State lawmakers could use the ACA as a foundation for moving toward giving all Wisconsinites access to health insurance by creating an option for people to purchase BadgerCare through the ACA Marketplace. A public option with robust enrollment would likely serve to lower

premiums for private health insurance, and it's possible that Wisconsin could get federal approval to reinvest dollars that would have come from premium tax credits to help fund the program through additional discounts or higher reimbursement rates.

- **Explore implementation of a state mandate for minimum coverage** –The requirement that people have insurance coverage was a key component of the ACA, but in 2017 Congress eliminated the penalty for not having health insurance. Without the penalty, it's likely that some people, particularly those who are younger and healthier, will go uninsured, which can drive up the costs for everyone else. Five states and DC have coverage mandates, and some states have directed revenues to help fund their reinsurance programs. (source: KFF)
- **Offer additional financial assistance to help people afford coverage** – State lawmakers could create state-funded programs to help subsidize the cost of premiums and deductibles for lower-income people who might still be struggling with the cost of care, for people above 400% of the federal poverty level who receive no financial assistance from the ACA, and for people who are ineligible for assistance because of their immigration status.

2021 will plot the course for the future of the Affordable Care Act

ACA opponents have been able to roll back and undermine the Marketplace through administrative changes and Congressional actions weakening the individual mandate that everyone has health insurance. These efforts have made health insurance through the Marketplace more expensive and there's been a steady decline of people on the Marketplace. Disenrollment has fallen most on people with lower incomes and people who do not receive financial assistance.

Despite this decline, nearly 200,000 Wisconsinites count on the ACA for coverage, and the Marketplace is particularly important in more rural areas of the state. About eight out of ten Marketplace consumers receive financial assistance to help cover their premium costs. Although the ACA helped increase coverage rates for people of all races and ethnicities, coverage still lags considerably for Black, Latinx, and Native American residents, and the federal government doesn't collect enough data for us to know how well the Marketplace is serving people of color. One way the state could almost certainly decrease coverage disparities is to take full advantage of the ACA by expanding Medicaid, which would give thousands of people a much more affordable option for health coverage.

Wisconsin has taken a modest step to help stabilize the ACA Marketplace by creating a reinsurance program that has helped hold down the premiums paid by Marketplace participants who are ineligible for federal premium tax credits. However, the success of that strategy in stabilizing rates will be undermined if federal policymakers continue to implement changes that encourage healthy individuals to buy skimpy insurance plans outside the ACA Marketplace and threaten its continued viability.

The long-term fate of the individual health insurance Marketplace in Wisconsin is up in the air. With an election between an opponent of the ACA and one of its architects, as well as a constitutional challenge scheduled for Supreme Court consideration shortly after the election, 2021 figures to be a decisive year for the ACA.

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