

Q&A: Insurance Coverage of Pre-existing Health Conditions

Now that the Affordable Care Act (ACA) has been in place for several years, most Americans take it for granted that their health insurance policy will cover the medical care they need. We no longer worry that the insurance company will deny coverage to treat health conditions that we had before acquiring our health insurance.

However, despite the fact that coverage of “pre-existing conditions” is an extremely important and very popular part of the ACA, it is one of the parts of the law that is being attacked on many fronts and could soon be eliminated. A pending lawsuit that could strike down the entirety of the ACA is one of many threats to the current laws and regulations that ensure coverage of pre-existing conditions.

What is a pre-existing condition?

A “preexisting condition” is a medical condition that existed before the date when someone’s health insurance coverage began. In most states, even if a condition had not been diagnosed, the prior existence of symptoms could be grounds for an insurer to deny coverage for treatment of that health condition (before implementation of the ACA).

How many people have pre-existing conditions?

Estimates of the number of people who have pre-existing conditions vary widely, with one report from the Department of Health and Human Services indicating that the number could be as high as 133 million non-elderly Americans, or one out of two.¹ At the lower end of the range, the Kaiser Family Foundation released a report this year which estimated that 52 million nonelderly Americans have one or more excludable pre-existing conditions, including 852,000 Wisconsinites.²

What are the most common types of pre-existing conditions?

An analysis of different data sources by CNN compiled estimates of the frequency of various medical conditions in the U.S. Based on their research, these are the most common pre-existing conditions: acne, anxiety, diabetes, asthma, sleep apnea, depression, chronic obstructive pulmonary disease, extreme obesity, atherosclerosis, and cancer.³

What is the current litigation that threatens coverage of pre-existing conditions?

Twenty states, including Wisconsin, filed a lawsuit this year challenging the constitutionality of the ACA. Wisconsin’s Attorney General, Brad Schimel, is participating in the litigation, with the approval of Governor Scott Walker. The lawsuit contends that the ACA is now unconstitutional because the tax overhaul passed by Congress late last year

eliminated the tax penalties for people who do not comply with the requirement to have insurance. Oral arguments begin in September in a federal court located in Texas.

Will coverage of pre-existing conditions continue to be guaranteed if the ACA is struck down by the courts?

No. According to the Wisconsin Attorney General, a court ruling in support of his position would invalidate all of the ACA, including the portions

of the law that ensure coverage of pre-existing conditions. A letter from U.S. Attorney General Jeff Sessions takes a somewhat different position by conceding that some of the ACA could survive the legal challenge. However, that letter agrees with the argument that the protections for coverage of pre-existing conditions are unconstitutional. Many legal scholars disagree, but Sessions and the U.S. Justice Department have declined to defend the ACA in this litigation.

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How did insurers discriminate against people with pre-existing conditions before the ACA?

Until key parts of the ACA took effect in 2014, state and federal laws allowed insurance companies to deny coverage to people with pre-existing health conditions or charge significantly more for insuring those individuals. Even after buying and paying for insurance coverage for many years, people would sometimes have claims denied for services covered by their insurance plan – if an insurer could contend that it was previously unaware that the insured individual had pre-existing conditions relating to the needed health services. Prior to the ACA, insurers would also engage in other practices that were especially problematic for people with pre-existing conditions, such as excluding coverage for various types of health care, such as mental health and prescription drugs, refusing to insure people in some professions, and putting lifetime and annual caps on benefits.

Would repeal of the ACA affect pre-existing condition coverage for people with employer-sponsored insurance?

Yes. Although repeal of the law would be particularly harmful for people who buy insurance in the

individual marketplace, it would also adversely affect people with employer-sponsored insurance. Prior to the ACA, it was common for employer-sponsored plans to exclude coverage of pre-existing conditions for a year for anyone who had not maintained continuous coverage. Repeal of the ACA or a court ruling striking it down would return the U.S. to an era when people insured by their employer experience “job lock,” which is the fear of changing jobs because of the likelihood that their pre-existing conditions would not be covered if they pursue entrepreneurial or freelance opportunities.

How did the ACA protect 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 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, and maternity care.

- Prohibiting annual and lifetime caps on coverage.
- Creating a subsidized individual insurance Marketplace that makes quality health care much more affordable and allows comparative shopping.

Would the Republican “repeal and replace” plan that came close to passing in 2017 have continued protections for people with pre-existing conditions?

Not in an effective way. The proposals debated last year in Congress would have greatly weakened coverage for people with pre-existing conditions in many different ways. Although the House-passed bill would not have explicitly eliminated guaranteed coverage, it would have allowed states to get waivers from some of the ACA’s consumer protections. States that got waivers could scale back or eliminate some of the current requirements to cover “essential health benefits,” and that would have enabled insurers to re-impose annual or lifetime caps on some of those services.

Are there other threats to pre-existing condition coverage besides ACA repeal and the pending litigation?

Yes, the Trump administration is in the process of implementing a number of rule changes that are expected to weaken the ACA’s consumer protections. For example, on August 1, 2018, the Trump administration finalized a rule that vastly expands the definition of short-term health plans, which are exempt from the current consumer protections. That change could dramatically increase the number of plans exempt from ACA requirements: coverage of essential benefits; elimination of annual and lifetime benefit caps; annual limits on out-of-pocket costs; the prohibition against medical underwriting; and limits on premium variations based on age, sex or health status. Another recently approved rule change will allow employers to offer “association health plans” that would also be exempt from some of the requirements now protecting people with pre-existing conditions.

How do changes affecting the ACA insurance Marketplace relate to coverage of people with pre-existing conditions?

The subsidized health insurance Marketplace created by the ACA provides health care coverage for more than 10 million Americans (including more than 200,000 Wisconsinites), and it is particularly important for people with pre-existing conditions. However, President Trump has said and repeatedly demonstrated that he wants to use administrative tactics to destabilize the Marketplace and cause it to collapse. Some of the many tactics employed by the Trump administration to undermine the ACA Marketplace include: slashing funding for advertising and for “navigators” who help people understand their options and sign up for coverage, cutting the enrollment period in half, and ending the cost sharing reduction payments for insurers. So far, these tactics have mostly just increased the cost of Marketplace plans, and for about 84% of Marketplace participants the increases in premiums are offset by higher premium tax credits. However, some of the new rule changes, such as substantially broadening the range of insurance plans that are exempt from regulation, could destabilize the Marketplace and put at risk its capacity to continue being a source of affordable coverage for people with pre-existing conditions.

Prior to implementation of the ACA, did Wisconsin’s high-risk pool ensure coverage of pre-existing conditions?

Wisconsin’s high-risk plan, known as the Health Insurance Risk-Sharing Plan (HIRSP) helped some people with pre-existing conditions obtain insurance coverage, but it had a number of drawbacks and only made a small dent in the need for insurance coverage. Although the Wisconsin high-risk plan was the fourth largest in the country (relative to the number of people purchasing insurance individually), it only served about 22,000 people – at a time when more than 500,000 Wisconsinites were uninsured.⁴ High-risk plans were not a good solution to the problem because many people were ineligible, the plans were too expensive for most Wisconsinites, they imposed a six-month waiting period, and they capped the benefits covered.

Would coverage of pre-existing conditions have been protected by the bill passed by the Assembly in 2017?

In the summer of 2017 the State Assembly passed a bill, [AB 365](#), described by its proponents as a means to ensure that insurers may not deny coverage for pre-existing conditions. On its face, the amended bill (which the State Senate did not approve) would have prohibited insurers from imposing a pre-existing condition exclusion. However, a couple of problems would keep the bill from being an effective alternative to the protections provided by the ACA. First, federal law precludes states from regulating most employer-sponsored insurance plans (whereas the ACA does regulate those self-insured plans). Second, if the House “repeal and replace” bill passed, AB 365 would not have prevented insurers from dropping coverage for health care services that under the ACA have to be covered, or from putting caps on those services. For example, a cancer patient requiring expensive chemotherapy could find early in their treatment that they had reached a cap on how much the insurer would pay for a lifesaving drug.

Are there things that states can do to protect coverage of pre-existing conditions?

State actions cannot fully replace the protections in the ACA because federal law prevents states from regulating plans offered by employers that self-insure (which is the largest portion of employer-sponsored insurance in Wisconsin). However, states can take actions that help people in the individual insurance market. For example, states can set their own limits on the length of short-term plans that are exempt from most consumer protections. States can also regulate association health plans, which are also exempt from some of the requirements now protecting people with pre-existing conditions. In early 2018, the Trump administration finalized a rule that allowed state to weaken health insurance plans sold on the Marketplace. States could refuse to water-down their health insurance requirements and maintain a strong set of benefits.

As the public has gotten increasingly concerned about the threats to coverage of pre-existing conditions, have Republicans in Congress proposed other ways to protect that coverage?

In August 2018, ten Republicans in the U.S. Senate introduced a new alternative to the ACA that would continue to prohibit insurers in the individual market from varying premiums based on health. However, their bill would weaken consumer protections by allowing insurers to vary premiums based on gender, age, occupation and leisure activities, and by permitting small business premiums to vary based on the health of their workers. The new bill also creates a larger problem described by Larry Levitt, the senior vice president for health reform at the Kaiser Family Foundation:

“An insurer would have to give you insurance if you have a pre-existing condition, but it could exclude any services associated with your pre-existing condition. This would make protections for people with pre-existing conditions a bit of a mirage.”⁵

Conclusion

The Affordable Care Act leveled the playing field for people seeking health insurance, and put in place popular, common-sense consumer protections. Opponents to the ACA have so far been unsuccessful in their attempts to repeal and replace the health care law, but are weakening it through administrative action. These actions and the pending court challenge to the ACA threaten protections for people with pre-existing conditions. Although states can make some changes to protect consumers, without the ACA millions of people with diabetes, depression, asthma, cancer, and high blood pressure would be at risk of no longer getting the care they need.

Endnotes

1. At risk: Pre-Existing Conditions Could Affect 1 in 2 Americans; Centers for Medicare and Medicaid Services, Centers for Medicare and Medicaid Services, <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/preexisting.html>
2. Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA, Gary Claxton, Cynthia Cox, Anthony Damico, Larry Levitt, and Karen Pollitz; Kaiser Family Foundation, Dec. 12, 2016. <https://www.kff.org/health-reform/issue-brief/pre-existing-conditions-and-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/>
3. The most common pre-existing medical conditions, Jen Christensen, CNN, Sept. 21, 2017, <https://www.cnn.com/2017/09/20/health/most-common-pre-existing-conditions/index.html>
4. High-Risk Pools for Uninsurable Individuals, Karen Pollitz, Kaiser Family Foundation, Feb. 22, 2017, <https://www.kff.org/health-reform/issue-brief/high-risk-pools-for-uninsurable-individuals/>
5. Republican bill on pre-existing conditions is not what it appears to be. Steve Benen, MSNBC, Aug. 27, 2018, <http://www.msnbc.com/rachel-maddow-show/republican-bill-pre-existing-conditions-not-what-it-appears-be>