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Repealing the Affordable Care Act Essential Health Benefits: Threats and Obstacles

The Affordable Care Act (ACA) expanded and improved health insurance coverage in two primary ways. First, the number of individuals receiving insurance coverage expanded by increasing access to coverage through Medicaid expansion and providing subsidies to purchase private insurance on the health care exchanges. Second, the ACA upgraded the quality and scope of coverage by improving benefit design, including implementing the essential health benefits (EHBs). Essential health benefits are minimum insurance benefits encompassing 10 categories of care, which the ACA required all individual and small-group market plans, as well as all plans sold on the health care exchanges, to cover. Mandating benefits for individual and small-group markets was a historic step, improving population health by providing access to crucial health care services for millions of Americans.[1] Although some components of the ACA are popular with Republican policymakers, including coverage for preexisting conditions and Medicaid expansion, the EHBs' future is in doubt.

The first attempt by Congressional Republicans and the White House to advance the American Health Care Act (AHCA) in the House of Representatives as an ACA replacement was unsuccessful. During debate over the replacement plan, divisions between conservative and moderate Republicans emerged. To tame divisions and gain conservative support, House Republicans—immediately before a scheduled vote on the AHCA—added an amendment eliminating EHBs from the individual and small-group markets. Even with the amendment and pressure from President Trump, House Republicans did not have enough votes to pass AHCA and pulled the bill from consideration. House Republicans have since resurrected and passed the AHCA, helped by an amendment permitting states the option to waive EHB requirements.

The ultimate outcome of repealing and replacing the ACA is uncertain. However, it is clear that EHBs will continue to be a target of Republican health-reform attempts. As repeal-and-replace efforts persist, the EHBs face three main challenges: (1) regulatory implementation of the EHBs, (2) struggling individual and small-group markets in many state insurance exchanges, and (3) the Trump administration's push for selling health insurance across state lines.

IMPLEMENTATION BY REGULATION

Although the ACA mandated which services must be covered under EHBs, regulations made by the Department of Health and Human Services (HHS) and state governments after passage of the ACA drove much of the development, definition, and implementation of the law. Implementation through regulation affects the future of EHBs as they currently stand in two ways. First, the Trump administration does not need to pass new legislation to alter the effectiveness of EHBs. Rather, through either an executive order or regulatory changes, they can pare down the scope of coverage required in marketplace plans or provide states additional flexibility in administrating required EHB coverage. Less restrictive coverage requirements would allow insurers freedom to tailor plan offerings with cheaper, less comprehensive benefit packages.

Second, implementation by regulation also affected the quality of EHB coverage. In 2011, HHS delegated authority to the states, without offering much formal guidance to mandate explicit levels of coverage required for EHBs. States were allowed to select their own benchmark plan and subsequently design or redesign benefits within the confines of providing some type of coverage in each EHB category.[2] When HHS announced the rules, it assumed that there would be some variation in benefit coverage among some state markets and plans, but that overall there would be "no systematic difference noted in the breadth of services among these markets."[2(p7)] Despite the EHBs' efforts to

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standardize coverage, there is significant variation in the degree of coverage mandated between states. This variation perpetuates disparities in health care coverage and access across state lines. Coverage for EHBs varies widely across the states in pediatric care, nutrition and weight loss, autism treatment, chiropractic care, and mental health and substance use disorder care.[3,4]

STRUGGLING INDIVIDUAL MARKETS

Over the past year, individual and small-group insurance plans sold on health exchanges faced several challenges. Enrollment of fewer-than-expected young and healthy individuals, whose enrollment is necessary to balance risk pools and expenses, increased costs for insurance companies. In response, insurers started pulling their plans from the marketplaces. Six states only have one insurer participating in their marketplace.[5] At the same time, midlevel, so-called silver-tier plan premiums—the most popular category of insurance plan sold on exchanges—increased by an estimated average of 22% in 2017.[6]

The Trump presidential campaign leveraged struggling individual and small-group markets, escalating premiums, and tumbling insurer participation in its calls to repeal the ACA. Republican efforts to weaken or repeal the individual mandate will further undermine the individual market's stability and exacerbate current marketplace trends. The EHBs may become unfeasible if coverage costs continue to rise, and markets continue to flounder.

INTERSTATE EXCHANGES

One consistently stated health policy objective from Trump is promoting health insurance sales across state lines. The Trump administration argues that reducing regulations and encouraging free-market principles will increase consumer choice and lower premium costs. In reality, interstate health insurance sales would let insurers select their regulator, reducing important accountability controls protecting consumers and markets, such as regulators' ability to assist consumers in their state.[7]

There is a trade-off between EHBs and interstate sales. With less regulation, health insurers may enter in a race to the bottom—selling the lowest-common-denominator benefit plans between states—seeking to offer sparser benefit coverage as means to cherry-pick healthier consumers and exclude high-risk patients. Interstate insurance sales paired with reduced regulation and preexisting variation in state benefit requirements would jeopardize the viability and quality of the individual and small-group markets. Eliminating the EHBs would have the same effect, incentivizing a race to the bottom for within-state insurance benefit plan sales. In short, the markets would revert to their pre-ACA state, riddled with low-value plans and limited consumer financial protections.[7]

POLICY IMPLICATIONS

The Executive Branch wields enormous power to determine EHB-mandated coverage for insurance plans. Even if Congress does not replace the ACA, delays a replacement plan, or retains the EHBs, how grim is the future of the EHBs? In an increasingly uncertain political environment, two important factors will affect the EHBs' future and the scope of health insurance benefit coverage. First is the fragmenting Republican health policy agenda highlighted during the AHCA debate. Congress, facing the complexity and risks of public harm that come with repeal, may remain hesitant about a full ACA repeal, sparing the EHBs. At the same time, the Trump administration continues to act to centralize power in the presidency, and unify the Republican agenda, standing by a full ACA repeal and replace.

Second, states are increasingly resistant to repeal efforts. Regardless of federal action, many states have outlined plans to uphold major ACA components, including the health care exchanges, individual mandate, and Medicaid expansion. State governors remain key policy decision-makers with great interests in protecting the needs and ability of their citizens to access comprehensive health care coverage. The balance between efforts to centralize executive power and the executive agenda, coupled with federalism and divided state interests, will shape the future of the EHBs and the quality of health care coverage that Americans are guaranteed and to which they have access. The EHBs face many threats, most critically the ease by which regulatory authority can eliminate them and the current health of the marketplaces advancing their extinction. The EHBs' survival hinges on innovative state and congressional action. AJPH

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