



Trump Administration Actions Threaten People with Pre-Existing Conditions

*Prepared for Rep. Elijah E. Cummings
State of Maryland*

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EXECUTIVE SUMMARY

Before the Patient Protection and Affordable Care Act (ACA) was enacted in 2010, one of the most devastating experiences for Americans with pre-existing health conditions was the refusal by insurance companies to cover them, or to charge them rates that were exorbitantly higher than for people without pre-existing conditions. This discrimination by insurance companies against people with pre-existing health conditions was allowed under federal law, and it was a leading cause of bankruptcies as families often lost their homes and their entire savings.

Congress ended this legalized discrimination by establishing a set of new statutory protections for people with pre-existing conditions. Among these protections, insurance companies are now required to offer coverage to everyone, regardless of health status—a protection known as “guaranteed issue.” Insurance companies are also barred from charging higher premiums on the basis of health status—a protection known as “community rating.” In addition, insurance companies are now prohibited from selling policies that do not cover pre-existing health conditions—a protection known as the “coverage exclusion prohibition.”

On June 7, 2018, Attorney General Jeff Sessions sent a letter informing House Speaker Paul Ryan that the Department of Justice no longer will defend in federal court the ACA’s requirement that individuals maintain insurance coverage and that the guaranteed issue, community rating, and coverage exclusion provisions should no longer remain in effect. His letter did not offer any alternative protections for individuals with pre-existing conditions. He explained that he was acting “with the approval of the President of the United States.”

In order to assess the potential effects of the Trump Administration’s decision not to defend these protections for Americans with pre-existing health conditions, this report was prepared by the Democratic staff of the House Committee on Oversight and Government Reform at the request of Representative Elijah E. Cummings for the State of Maryland.

This report estimates that as many as 260,000 people in the individual market in the state may lose federal protections against coverage denials or premium increases as a result of their pre-existing health conditions, gender, or age.

- **Individuals with Pre-Existing Health Conditions:** As many as 167,000 people in the state who purchase insurance through the individual market have pre-existing health conditions and may lose federal protections against coverage denials or premium increases as a result of the Administration’s actions. Of these individuals, 79,000 have pre-existing health conditions severe enough that insurers may deny them coverage altogether.
- **Women:** As many as 160,000 women in the state who purchase coverage through the individual market may lose federal protections against coverage denials or premium increases because of their gender as a result of the Administration’s actions. Before current protections were put in place, a 40-year-old Maryland woman paid 21% to 39% more for coverage than a man of the same age as a result of discrimination by insurance companies.

- **Older Adults:** If current statutory protections are eliminated, older Americans could be charged more than ten times the amount younger adults pay for their insurance premiums. As many as 108,000 individuals between 50 and 64 years old in the state who purchase health insurance through the individual market may lose federal protections against coverage denials or premium increases as a result of the Administration's actions.

In addition to these populations, if current statutory protections are eliminated, insurance companies once again may discriminate against individuals with higher risk occupations. For example, as many as 19,000 construction workers, 9,700 shipping clerks, and 4,800 EMTs employed in the state who currently purchase health insurance through the individual market may lose federal protections against coverage denials or premium increases as a result of the Administration's actions.

Although this staff report focuses primarily on individuals who purchase insurance through the individual market, eliminating the current federal protections for individuals with pre-existing health conditions also may threaten as many as 3,178,000 individuals in the state with employer-sponsored insurance.

Current law prevents employer-sponsored group health plans from excluding coverage for pre-existing health conditions. As a result of the Trump Administration's decision not to defend this provision, employer plans once again may be able to exclude coverage of pre-existing health conditions to new employees for up to a year if they did not maintain continuous insurance coverage before enrolling in the employer's insurance plan.

METHODOLOGY

This staff report is based on data from the 2016 American Community Survey (ACS), which is compiled by the Census Bureau.¹ The number of people who could lose their health insurance or be charged more for coverage is drawn from ACS survey data.

Individuals are determined to have insurance coverage through the individual market if they report having no insurance except for insurance purchased directly from insurance companies. ACS data is also used to determine the gender and age of individuals purchasing plans through the individual market.

The number of individuals with pre-existing health conditions is based on a 2017 estimate by the Department of Health and Human Services that 55% of individuals who purchase plans on the individual market nationwide have pre-existing health conditions.²

The number of individuals under 50 with declinable pre-existing health conditions is based on state-level estimates from the Kaiser Family Foundation.³

The number of individuals between 50 and 64 years old with declinable pre-existing health conditions is based on estimates from AARP.⁴

The average percentage difference between the cost of health insurance for women and men was drawn from a 2015 analysis prepared by the National Women's Law Center. This figure represents the maximum percentage difference in premiums between 40-year-old women and men, among plans that previously used gender rating.⁵

The number of individuals who may face potential coverage denials or rate discrimination because of their occupation is calculated using data from the 2017 Occupational Employment Statistics, which is collected by the Bureau of Labor Statistics.⁶

All estimates are population-weighted and adjusted to prevent double-counting.

I. THE TRUMP ADMINISTRATION'S DECISION TO ABANDON PRE-EXISTING CONDITION PROTECTIONS

Before Congress passed the current statutory protections, insurance companies discriminated against people on the basis of gender, age, occupation, and pre-existing medical conditions, such as cancer, diabetes, and substance use disorder. Individuals with severe pre-existing health conditions were denied insurance coverage, and those who were able to obtain coverage were charged significantly higher premiums. Insurance companies also used exclusionary riders and imposed higher deductibles for people with pre-existing health conditions.⁷

For example, one study found that a decade-old knee surgery could increase premiums by 25% to 40%, and depression could increase premiums by 20% to 50%.⁸ Another analysis found that being overweight could increase premiums by 25%, and having asthma could increase an individual's premiums by more than \$4,000 per year.⁹ The exorbitant cost of medical bills drove many Americans and their families to bankruptcy. In 2010 alone, there were more than one million bankruptcy filings, and medical bills were a contributing factor in many of these cases.¹⁰

In 2010, Congress enacted a set of protections for people with pre-existing conditions. Among these statutory protections, insurance companies are now required to offer coverage to everyone, regardless of health status—a protection known as “guaranteed issue.”¹¹ Insurance companies are also barred from charging individuals higher premiums on the basis of their health status—a protection known as “community rating.”¹² In addition, insurance companies are now prohibited from using policy riders to exclude coverage for pre-existing health conditions—a protection known as the “coverage exclusion prohibition.”¹³

In 2012, the Supreme Court upheld the constitutionality of the ACA's requirement that individuals maintain health insurance coverage.¹⁴ After Donald Trump became President, however, the Administration and congressional Republicans sought to undermine the health care law by reducing to zero the penalty for not having health insurance. They did this through the tax bill that was passed last year.¹⁵

On June 7, 2018, Attorney General Jeff Sessions sent a letter informing House Speaker Paul Ryan that the Department of Justice no longer will defend in federal court the constitutionality of the requirement to maintain individual insurance coverage, which he argues will become unconstitutional on January 1, 2019. He also explained that the guaranteed issue, community rating, and coverage exclusion provisions should no longer remain in effect.¹⁶

More than a dozen state Attorneys General oppose the Trump Administration's position and have intervened in ongoing litigation.¹⁷

The Trump Administration has yet to offer any alternative proposals to protect individuals with pre-existing conditions from discrimination.

II. ESTIMATED EFFECTS OF THE TRUMP ADMINISTRATION'S ACTIONS

This staff report examines the estimated impact of the Trump Administration's decision to abandon this set of protections on individuals in the State of Maryland. As many as 260,000 people in the individual market in the state may lose federal protections against coverage denials or premium increases as a result of their pre-existing health conditions, gender, or age.

Effects on Individuals with Pre-Existing Health Conditions

In the state, as many as 167,000 people who purchase insurance through the individual market have pre-existing health conditions and may lose federal protections against coverage denials or premium increases as a result of the Administration's actions. Of these individuals, 79,000 have pre-existing health conditions severe enough that insurers may deny them coverage altogether.

Effects on Women

Under current federal law, insurance companies are prohibited from charging women higher premiums on the basis of gender. Before this protection was put in place, a 40-year-old Maryland woman paid 21% to 39% more for coverage than a man of the same age as a result of rate discrimination.¹⁸ If the Trump Administration's actions are successful, federal protections barring insurance companies from charging women more than men for insurance will be eliminated.

This premium disparity may be even greater than before, as maternity coverage is now an essential health benefit that must be included in all plans offered on the individual market. Before these protections were enacted, few individual market plans offered maternity coverage, maternity coverage often was purchased separately, and some plans charged as much as \$10,000 for supplementary maternity coverage.¹⁹ If the community rating provision is eliminated, insurance companies may charge women even more for maternity coverage.

In the state, as many as 160,000 women who currently purchase coverage through the individual market may lose federal protections against coverage denials or premium increases because of their gender as a result of the Trump Administration's actions. As many as 66,000 of these women are in households that do not qualify for financial assistance in the form of tax credits and would bear the full cost of premium increases.

Effects on Older Adults

Before current protections were put in place, older individuals seeking coverage were charged significantly higher premiums than younger individuals. In certain cases, unsubsidized insurance premiums for older Americans were 17 times higher than premiums for healthy, young adults.²⁰ Current statutory provisions protect older adults from this kind of rate discrimination by capping their insurance rate at three times the premium of a younger adult.

In the state, as many as 108,000 individuals between 50 and 64 years old who currently purchase health insurance through the individual market may lose federal protections against coverage denials or premium increases as a result of the Trump Administration's actions. Of these older adults, as many as 52,000 do not qualify for financial assistance in the form of tax credits and would bear the full cost of premium increases.

Effects on Individuals with High Risk Occupations

Before current protections were put in place, insurance companies were permitted to discriminate against individuals in more than 100 occupations deemed high risk. If the guaranteed issue and community rating provisions are eliminated, these individuals once again may face coverage denials or higher premiums due to their occupations.

For example, as many as 19,000 construction workers, 9,700 shipping clerks, and 4,800 EMTs employed in the state who currently purchase health insurance through the individual market may lose federal protections against coverage denials or premium increases as a result of the Administration's actions.

Effects on Individuals with Employer-Sponsored Coverage

Individuals with pre-existing conditions who obtain coverage through the individual market are most at risk if existing statutory protections are eliminated because they lack group buying power. However, certain protections also apply to people who obtain coverage through their employers, and these individuals also may be at risk as a result of the Trump Administration's actions.

Current law prevents employer-sponsored group health plans from excluding coverage for pre-existing health conditions. As a result of the Trump Administration's decision not to defend this provision, employer plans once again will be able to exclude coverage for pre-existing health conditions to new employees for up to a year if they did not maintain continuous insurance coverage before enrolling in the employer's insurance plan.²¹

In the state, approximately 3,178,000 individuals who obtain coverage through their employers could be at risk of losing this federal protection.

CONCLUSION

The Trump Administration's decision not to defend key federal protections against insurance company discrimination threatens more than 130 million people with pre-existing health conditions in the United States, including 167,000 individuals in the State of Maryland. If the Trump Administration is successful in effectively eliminating the guaranteed issue provision, the community rating provision, and the coverage exclusion prohibition, insurance companies once again will be able to increase premiums and deny coverage altogether based on gender, age, occupation, and pre-existing health conditions.

APPENDIX: DISTRICT-LEVEL BREAKDOWN FOR THE STATE OF MARYLAND

District	People at Risk of Coverage Loss or Premium Increases ^a	People with Pre-Existing Health Conditions at Risk of Coverage Loss or Premium Increases ^b	People with Pre-Existing Health Conditions at Risk of Coverage Denials ^c	Women at Risk of Coverage Denials or Premium Increases ^d	Women Who Would Bear the Full Cost of Premium Increases ^e	Older Adults at Risk of Coverage Denials or Premium Increases ^f	Older Adults Who Would Bear the Full Cost of Premium Increases ^g	People with Employer-Sponsored Coverage ^h
MD-01 (Rep. Harris)	39,000	25,000	12,000	24,000	9,000	19,000	8,000	361,000
MD-02 (Rep. Ruppertsberger)	29,000	18,000	9,000	18,000	7,000	13,000	6,000	397,000
MD-03 (Rep. Sarbanes)	31,000	20,000	10,000	20,000	9,000	12,000	6,000	412,000
MD-04 (Rep. Brown)	29,000	19,000	9,000	18,000	7,000	10,000	5,000	389,000
MD-05 (Rep. Hoyer)	28,000	18,000	9,000	16,000	7,000	10,000	5,000	401,000
MD-06 (Rep. Delaney)	33,000	21,000	10,000	20,000	8,000	14,000	6,000	399,000
MD-07 (Rep. Cummings)	30,000	19,000	9,000	18,000	8,000	12,000	6,000	374,000
MD-08 (Rep. Raskin)	41,000	26,000	12,000	26,000	12,000	17,000	9,000	444,000

^a Maximum Number of People in the Individual Market Who May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

^b Maximum Number of People with Pre-Existing Health Conditions Who Purchase Insurance through the Individual Market and May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

^c Maximum Number of People with Deniable Pre-Existing Health Conditions Who Purchase Insurance through the Individual Market (Kaiser Family Foundation; AARP)

^d Maximum Number of Women Who Purchase Insurance through the Individual Market and May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

^e Maximum Number of Women Who Purchase Insurance through the Individual Market and Would Bear the Full Cost of Premium Increases (2016 American Community Survey)

^f Maximum Number of Older Adults (50-64) Who Purchase Insurance through the Individual Market and May Lose Federal Protections Against Coverage Denials or Premium Increases (2016 American Community Survey)

^g Maximum Number of Older Adults (50-64) Who Purchase Insurance through the Individual Market and Would Bear the Full Cost of Premium Increases (2016 American Community Survey)

^h Number of People Who Obtain Coverage through Their Employers (2016 American Community Survey)

ENDNOTES

¹ Census Bureau, *2016 American Community Survey* (online at www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/).

² Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, *Health Insurance Coverage For Americans With Pre-Existing Conditions: The Impact of the Affordable Care Act* (Jan. 5, 2017) (online at aspe.hhs.gov/system/files/pdf/255396/Pre-ExistingConditions.pdf).

³ Kaiser Family Foundation, *Pre-Existing Conditions And Medical Underwriting in the Individual Insurance Market Prior to the ACA* (Dec. 2016) (online at www.files.kff.org/attachment/Issue-Brief-Pre-existing-Conditions-and-Medical-Underwriting-in-the-Individual-Insurance-Market-Prior-to-the-ACA).

⁴ American Association of Retired Persons Public Policy Institute, *In Health Reform, Stakes Are Higher for Older Americans With Preexisting Health Conditions* (Mar. 2017) (online at www.aarp.org/content/dam/aarp/ppi/2017-01/ACA-Protects-Millions-of-Older-Adults-with-Preexisting-Health-Conditions-PPI-AARP.pdf).

⁵ National Women's Law Center, *Turning to Fairness: Insurance Discrimination Against Women Today and the Affordable Care Act*, (Aug. 2015) (online at https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/nwlc_2012_turningtofairness_report.pdf).

⁶ Bureau of Labor Statistics, *2017 Occupational Employment Statistics* (online at www.bls.gov/oes/).

⁷ Memorandum from Chairmen Henry A. Waxman and Bart Stupak to Members of the House Committee on Energy and Commerce, *Coverage Denials for Pre-Existing Conditions in the Individual Health Insurance Market* (Oct. 12, 2010) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Memo-Coverage-Denials-Individual-Market-2010-10-12.pdf>).

⁸ Kaiser Family Foundation, *How Accessible is Health Insurance for Consumers in Less-Than-Perfect Health?* (June 2001) (online at www.kff.org/health-costs/report/how-accessible-is-individual-health-insurance-for/).

⁹ Center for American Progress, *Graham-Cassidy ACA Repeal Bill Would Cause Huge Premium Increases for People with Pre-Existing Conditions* (Sept. 18, 2017) (online at www.americanprogress.org/issues/healthcare/news/2017/09/18/439091/graham-cassidy-aca-repeal-bill-cause-huge-premium-increases-people-pre-existing-conditions/).

¹⁰ Consumer Reports, *How the Affordable Care Act Drove Down Personal Bankruptcy* (May 2010) (online at www.consumerreports.org/personal-bankruptcy/how-the-aca-drove-down-personal-bankruptcy/).

¹¹ 42 U.S.C. 300gg-1, 300gg-4(a).

¹² 42 U.S.C. § 300gg(a)(1), 300gg-4(b).

¹³ 42 U.S.C. § 300gg-3.

¹⁴ *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).

¹⁵ Pub. L. No. 115-97 (2017).

¹⁶ Letter from Attorney General Jefferson B. Sessions III, Department of Justice, to The Honorable Paul Ryan, Speaker of the House (June 7, 2018) (online at www.justice.gov/file/1069806/download).

¹⁷ State of California Department of Justice, Office of the Attorney General, *In Texas et al. v. United States et al., Attorney General Becerra Leads Coalition of 17 Attorneys General Opposing Texas' Latest Move to End the Affordable Care Act* (June 7, 2018) (online at www.oag.ca.gov/news/press-releases/texas-et-al-v-united-states-et-al-attorney-general-becerra-leads-coalition-17).

¹⁸ National Women's Law Center, *Turning to Fairness: Insurance Discrimination Against Women Today and the Affordable Care Act* (Aug. 2015) (online at https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/nwlc_2012_turningtofairness_report.pdf).

¹⁹ *Id.*

²⁰ The Commonwealth Fund, *Insuring the Healthy or Insuring the Sick? The Dilemma of Regulating the Individual Health Insurance Market* (Feb. 2005) (online at www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_fund_report_2005_feb_insuring_the_healthy_or_insuring_the_sick_the_dilemma_of_regulating_the_individual_health_insurance_771_turnbull_insuring_healthy_or_sick_findings_pdf.pdf).

²¹ *If The Trump Administration Has Its Way, Insurance Coverage for Pre-Existing Conditions Could Cost You More*, CNN (June 14, 2018) (online at www.cnn.com/2018/06/14/opinions/trump-administrations-threat-to-coverage-for-preexisting-conditions-jost/index.html).

Report: Millions in Maryland could lose health coverage or pay more because of feds' Obamacare stance



The protections remain in place currently while the lawsuit is pending in court.

Millions in Maryland could lose or pay more for their health insurance due to gender, age, or pre-existing conditions if Obamacare is found unconstitutional.



By **Andrea K. McDaniels**
The Baltimore Sun

OCTOBER 2, 2018, 5:00 AM

Roughly 3.5 million Marylanders could lose their health insurance or face higher premiums due to their age, gender or a pre-existing condition because the Trump administration has decided not to enforce provisions of the federal law known as Obamacare, a new congressional report has found.

The decision by the U.S. Justice Department not to defend pillars of the Affordable Care Act against lawsuits fulfills a Republican promise to take steps to dismantle the law.

Some conservatives argue such protections penalize the healthy with higher premiums and are unconstitutional. But the decision also has the potential to restore roadblocks that prevent people from being able to buy health insurance, said Rep. Elijah Cummings, a Baltimore Democrat, who requested the report prepared by the
ment Reform.

Nista said.

She said the report likely doesn't take into account a new one-year program in Maryland that creates a reinsurance pool to provide funding for catastrophic claims. Hogan and Democratic lawmakers worked together to pass the law to prevent the ACA from collapsing in Maryland.

"That reinsurance program actually resulted in lower, not higher, premiums for Marylanders with pre-existing conditions, regardless of what action the courts take in the federal case," Nista said.

Doug Badger, a visiting fellow with the conservative think tank The Heritage Foundation, said state law would require coverage of pre-existing conditions no matter what a judge decides.

"Even if a judge were to invalidate federal pre-existing condition protections, it would have no effect in Maryland because the legislature has written these consumer protections into its state law," Badger said. "The pre-existing condition and other consumer protections will remain in effect in Maryland, regardless of what the courts do with the federal law."

But one report said state law doesn't offer enough protection.

A recent report by The Commonwealth Fund, a New York-based nonprofit that promotes better health care, concluded that Maryland does not have statutes at the state level to protect individual market consumers with pre-existing conditions, and Marylanders with pre-existing conditions could be affected by the Texas case.

If the Trump administration is successful in the Texas case, the impact of that legalized discrimination on costs for people with pre-existing conditions will not be cushioned by the state's reinsurance program, a Cummings spokeswoman said.

Beth Sammis, president of advocacy group Consumer Health First, said she remembers when people were denied coverage when they suffered with illnesses and needed it the most. She said maintaining these protections is crucial in keeping Maryland healthy.

"I hope that at the end of the day cool heads will prevail and we will make it so that we are not going back to the days when people had to worry about if they had health care," Sammis said.

Barbara Gruber said she is a "walking pre-existing condition." The 60-year-old has asthma, coronary artery disease and autoimmune disorders. She used to have trouble getting health coverage and would often end up paying exorbitant premiums when she did. She worries about being put in that position again if the protections are taken away.

"It if goes back to the way it was, I might end up with no insurance, in the emergency room and declaring bankruptcy," she said.

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