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The Trump Administration's Relentless Attack on Insurance for the Poor

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Abstract

What is the message? The Trump Administration provided Republicans long-sought opportunities to repeal the ACA and revamp the U.S. health system. So did Trump era policy actions impact access to affordable health care? We posed that question to two leading policy analysts with contrasting perspectives (read the opposing view here).

What is the evidence? Analysis and interpretation of publicly available data from multiple sources.

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Health insurance for poor Americans represents one of the most dramatic shifts in policy from the previous administration to the current one. Within days of taking office, President Biden issued and *Executive Order on Strengthening Medicaid and the Affordable Care Act[1].* This order set in motion a series of regulatory actions to reverse actions undertaken by the previous

administration – at times accompanied by strident speeches about the value of erecting barriers to access to health care for the poor[2]

During the Trump presidency, senior officials engaged in a systematic effort to roll back access to health insurance among low- income Americans. For those of us who work in health policy and lived through the Trump years, the effort was amazing, not only because of the factual distortions and oversights on which it rested but because it was accompanied by a strident tone and grandiose claims.

Far from saving the poor, the Trump administration relentlessly pursued a series of strategies – in Congress, the courts, and through administrative actions — to depress access to individual publicly-subsidized health insurance offered through the Marketplace and Medicaid. The *coup de gras* may have been its decision – in the face of a pandemic whose impact on health and the economy exploded into view by mid-March 2020 — not to establish a special enrollment period in the federal Marketplace, even as nearly all states operating their own Marketplaces did so. When access to affordable, good quality individual coverage mattered most, in other words, Trump officials, who took immense pride in their insurance market prowess, were nowhere to be found. We saw the magnitude of their refusal to take this simple step – one completely within their control — when, within weeks of the Biden administration's January 28th decision to move forward with a special pandemic enrollment period,[3] over 206,000 people had signed up (a 76,000 increase over the previous time period in 2020), with 385,000 awaiting application processing.[4]

Even a brief review of the facts underscores the deliberate approach of the administration.

By 2016, three years into full implementation of the Affordable Care Act, the number of uninsured Americans had fallen by 20 million, a 40 percent decline since the law's 2010 enactment. Improvements were evident across all racial groups and for the poorest people. [5] To be sure, as Corlette and colleagues describe in their comprehensive assessment of the ACA's impact on the individual insurance market,[6] there were shortcomings. Chief among these were inadequate affordability subsidies, a decision by the Obama administration immediately ahead of full implementation to allow underwritten policies to continue as "grandmothered" health plans (which in turn depressed enrollment of healthy people into ACA-compliant plans), and the flawed launch of the federal Marketplace website. These shortcomings were hardly

insurmountable; Marketplace glitches were corrected, a wind-down policy for grandmothered plans could have been devised, and as it ultimately did under the American Rescue Plan Act, Congress could have rectified the subsidy problem by increasing the generosity of both the subsidy income scale and the level of individual subsidies. Instead Republicans launched unending attacks aimed at ruining the individual market by blocking payment of cost sharing subsidies due insurers and attempting unlawfully to undo the ACA's three-year risk-corridor program whose purpose was to limit insurer risk as the new market settled in.[7] In spite of these early stumbles and unending opposition, the 2016 data showed the ACA's significant impact on population insurance rates.

Yet by the first half of 2020, the number of uninsured had risen by over 4 million. Although this reversal of fortune coincided with gravest public health crisis in a century, it was not directly precipitated by the pandemic.[8] Indeed, the evidence shows, the problem of unraveling coverage was in full swing by the middle of 2019, in the midst of an economy of unprecedented strength and with historically low unemployment. Rather than collapsing as a result of sudden economic setback, coverage steadily eroded under the Trump administration. By the eve of the pandemic, the number of uninsured Americans had risen by 14 percent over 2016 levels, from 28.2 million to 32.8 million.[9]

Several key factors appear to have driven this result; all were part of an ongoing effort to undermine the ACA and end Medicaid as a public entitlement program. Cumulatively, and over time, the administration's multi-pronged strategy exacted a major toll on health insurance coverage. This strategy can be summarized as follows: First, the administration pursued Congressional efforts to end the ACA and replace the Medicaid entitlement with a capped funding pool. Once the intense "repeal and replace effort" collapsed at the end of the summer of 2017, officials turned to other means. By that first summer, confident that the ACA would be gone, administration officials eliminated consumer outreach and enrollment support (why bother if the Marketplace as it then functioned was going to go away?).[10] Officials dramatically shortened the enrollment period and further pursued collapse of the subsidizes for the insurance market by refusing to pay cost sharing subsidies owed insurers. This latter strategy failed when state insurance commissioners allowed issuers to raise the price of silver premiums (termed "silver loading") in order to blunt the impact of lost cost sharing subsidies and preserve a viable market.[11] By tying revenue replacement to silver plans, commissioners effectively succeeded in using the federal premium subsidy system to compensate for the loss of cost sharing

subsidies and fashioned a successful remedy that likely cost taxpayers more than simply paying the cost sharing subsidies.[12]

On the Medicaid front, the administration launched an effort to make Medicaid enrollment and renewal more difficult[13] (as the biggest single beneficiary group, children also appear to have paid the largest price for this policy with enrollment dropping steeply and the number of uninsured children rising).[14] Pursuing what they euphemistically termed "immigration reform", the administration built a legal wall between legal immigrants and public insurance programs for which they are eligible by classifying enrollment in subsidized insurance as evidence of public charge, a classification that in turn can trigger loss or denial of permanent legal residency.[15] As one might expect, the policy exacted an enormous price on immigrant access to insurance.[16]

Also worth noting in the context of actions aimed at depriving individuals of access to publicly funded insurance were the compulsory work experiments launched by the administration and directly helmed by Seema Verma, an ardent believer tying Medicaid eligibility to the "dignity" of work.[17] By the end of the administration, these demonstrations – a grievous misuse of the special experimental powers granted the HHS Secretary under the Social Security Act — were either approved or pending in 19 states. Indeed, CMS continued to champion and approve the experiments even after a federal appeals court had halted Arkansas's first-in-the-nation demonstration,[18] and even after independent evaluation of the truncated program (CMS permitted Arkansas to proceed even though the state had put absolutely no evaluation in place) had documented mass confusion on the part of the poor and ultimately, the erroneous loss of coverage by over 18,000 eligible people.[19]

Just as officials ignored the steady attack on access to affordable publicly subsidized insurance, so, too, did they systematically mischaracterize their actions with respect to the scope and structure of insurance coverage itself. As individual insurance commissioners were struggling to hold onto the ACA-compliant plan market in the face of the enormous instability visited on insurers over the 2017 time period,[20] the administration focused on opening the door to widespread sale of short-term limited duration health plans – junk insurance that depends on medical underwriting, insurmountable cost sharing, and hollowed out benefits.[21] Also an area of focus for the administration was easing longstanding rules aimed at stopping fraud in the market for association health plans in order to promote a new generation of fly-by-night

companies that set up associations whose sole purpose is the sale of coverage that skirts ACA rules.[22]

Both of these strategies harm the individual market in two ways – by skirting the ACA rules and thereby opening consumers to access and coverage problems that health reform was designed to redress; and by siphoning healthier people out of the ACA compliant market, thereby further complicating the challenge of building an individual health insurance market that truly can function as the means by which people can buy comprehensive, affordable coverage that offers true protection against the cost of a broad range of health care.

Trump officials rounded out their conduct by pointing to their support for state "flexibility to address market challenges." As it turns out, this support chiefly took the form of a blatant misuse of yet other federal demonstration authority – Section 1332 of the ACA — in ways directly barred by the law itself. Chief among the ways in which the administration pursued 1332 to enable states to move the subsidized insurance market away from ACA has been its approval of a Georgia plan – now the subject of a court challenge – that would effectively eliminate the use of a Marketplace, allow federal subsidies to flow to states that fall below ACA coverage standards, and ultimately result in substantial enrollment losses. [23] The Biden administration ultimately withdrew the rules change that permitted such deviations from the letter and spirit of 1332.[24]

To borrow a phrase from the Chief Justice's opinion in *King v Burwell,* the landmark 2015 Supreme Court decision that literally saved the ACA's market reforms and premium subsidies, Congress designed the ACA to strengthen the insurance market, not destroy it. The Trump administration pursued policies aimed at bringing down the entire system of affordable individual coverage and that were instrumental in spurring an overall decline in coverage among the very people who most need government to make insurance coverage possible. Furthermore, the policies officials pointed to with pride are ones that, if permitted to continue, would have undermined the market for affordable health plans in both the near-term and long-term.

Overcoming the damage left behind has taken a concerted effort by the Biden administration to make matters right – by establishing a special enrollment period for low-wage pandemic victims who lost their jobs during the pandemic, by withdrawing approval for Medicaid work experiments, by shutting down unlawful 1332 waivers, and by championing a more generous

subsidy system to expand access to marketplace coverage. By the end of 2021, not only had Medicaid coverage as a national priority been restored, but the Biden White House was able to point to a 4.6 million-person gain in access to subsidized health plans.[25]

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