



The Repeal of the Affordable Care Act and Its Likely Impact on Chronic Pain Patients: “Have You No Shame?”

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The Affordable Care Act (ACA) was signed into law in March of 2010 by President Barack Obama, and represented the most significant expansion of health care coverage and regulatory overhaul since the establishment of Medicare and Medicaid in 1965.¹ The expansion of the number of individuals covered by health insurance under the ACA, most notably the clause prohibiting insurers from refusing to cover those with pre-existing conditions, has dramatically improved access to chronic pain management for approximately 50 million Americans living with chronic pain.² For a number of years, we have been writing about the urgent need to improve the deteriorating quality of pain management in the United States.³⁻⁶ Many patients believe that the war on prescription opioids, patients who rely upon them, and physicians with the audacity to still prescribe them has resulted in the marginalization of the nation’s pain care system.⁷⁻¹¹ However, the looming potential demise of the ACA based purely on political motivations and characterological flaws presents an existential threat of colossal proportions to chronic pain patients.

The expansion of those covered by health care insurance as a direct result of the ACA has been much heralded. By 2016, the number of Americans who were without insurance was reduced by almost 50%.¹² Unfortunately, since entering office, the current presidential administration has ostensibly been on a mission to dismantle the ACA, with particular vendettas against its open enrollment policies and improved access and maintenance of Medicaid coverage.¹³ As a result, the number of uninsured American adults has increased gradually since the beginning of the Trump presidency, although is still considerably lower than was the case prior to the enactment of the ACA.^{14,15} Due to the economic crisis secondary to the COVID-19 pandemic, the uninsured population in the United States is expected to rise by almost 3 million by the end of 2020.¹⁶ Unfortunately, this increase is likely to represent only the tip of the iceberg if the ACA is to be dismantled.

The current administration’s approaches to striking down the ACA have been multifaceted, and, in some cases, nefarious. In a recent article from the Brookings Institution, the author described the six ways in which the president has attempted to sabotage the act,¹⁷ with the first five pertaining to strategies aimed at reducing enrollment. Based on the data presented above, this scheme has been at least somewhat successful. The sixth strategy that the author lists, persuading the

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Supreme Court to strike down the ACA as “unconstitutional,” did not appear to be realistic – prior to the untimely death of Associate Justice Ruth Bader Ginsburg and the subsequent nomination and confirmation of the extremely conservative and self-professed textualist Associate Justice Amy Coney Barrett to fill her seat. Given Barrett’s history of sharp criticism of the ACA’s constitutionality, many Americans rightly fear that the act may soon be overturned. The Supreme Court is scheduled to hear oral argument for *California et al v. Texas et al.* on November 10th. Potential outcomes of *California et al v. Texas et al* include removal of the individual mandate or striking down the entire ACA as unconstitutional.¹⁸

Based on a 2017 analysis by the US Department of Health and Human Services (HHS), as many as 133 million Americans suffer from a pre-existing condition,¹⁹ coverage for which is guaranteed by the ACA. This figure is consistent with a 2019 study that found that prior to the ACA, roughly 50% of patients reported at least one pre-existing condition, while post-ACA, approximately 70% of patients reported at least one pre-existing condition.²⁰ These findings are also consistent with a more recent Gallup Poll, in which 43% of households reported pre-existing conditions.²¹ Should the ACA be overturned, insurance companies (not-for-profit as well as for-profit) will have the option of suspending coverage for any condition that they deem to be pre-existing, be that diabetes, mental health disorders, HIV/AIDS, cancer, pregnancy, heart disease, chronic pain, or numerous other conditions. HHS noted, “Any of these 133 million Americans could have been denied coverage, or offered coverage only at an exorbitant price, had they needed individual market health insurance before 2014.”

Much has been written about the failure of health insurance companies to serve as fiduciaries to those they cover, as they are concerned solely with their bottom lines rather than with enrollee well-being.^{22–26} This is particularly true of for-profit insurers. In fact, McFall has noted that limiting profitability of insurers was actually a goal of the ACA.²⁷ Not surprisingly, however, health insurance profit margins tripled between 2016 and 2018 as regulations were rolled back.²⁸

With 50 million chronic pain patients in the United States,² many, and likely most, would lose any access to pain care should ACA be overturned, as chronic pain would clearly represent a pre-existing condition. Surprisingly, in their 2017 policy brief,¹⁹ HHS did not include chronic pain in its list of common pre-existing

conditions. Chronic pain and its comorbidities are expensive to treat indiscriminately, and even more expensive to treat well. Most of these conditions are ideally treated from an interdisciplinary model, although such treatment has essentially been unavailable in the United States private sector for many years due to insurers’ refusal to cover this effective yet labor-intensive approach.^{23,29–31}

Systematic reviews have identified positive associations between chronic pain and a number of psychological/psychiatric conditions, including general anxiety disorder,³² post-traumatic stress disorder,³³ depression,³⁴ suicidality,³⁵ sleep disturbance,³⁶ and neurocognitive deficits.³⁷ Systematic reviews have also identified positive relationships between chronic pain and numerous physical conditions, including respiratory disorders,³⁸ diabetes,³⁹ obesity,⁴⁰ heart rate variability (a predictor of cardiovascular morbidity and mortality),⁴¹ and cardiovascular and cerebrovascular disease.⁴² Could insurers potentially disallow coverage for treatment of these numerous comorbidities simply based upon their empirically established relationships to chronic pain? This might represent a stretch, although given the health insurance industry’s current levels of anxiety regarding a single-payer option resulting in an erosion of their profits, it certainly cannot be ruled out as a possibility. For example, self-medication of pain with alcohol is extremely common.^{43–46} If a self-medicating chronic pain patient were to consequently develop an Alcohol Use Disorder requiring potentially expensive rehabilitative treatment, would it not be feasible for an insurer to refuse to cover its costs by attributing to it the status of a comorbidity of a pre-existing condition?

For a number of years, the ACA was unpopular among the majority of Americans, largely due to conservative propaganda.⁴⁷ Although the ACA has been much-maligned primarily for political purposes, research demonstrates that it reduces out-of-pocket expenses for health care dramatically – particularly for lower-income individuals.⁴⁸ Consequent to this research coupled with a divisive lack of trust for the current administration,⁴⁹ a recent Kaiser Family Foundation poll predictably indicated that a clear majority of Americans are now in favor of the ACA.⁵⁰ Perhaps more significant is the poll’s finding that 72% believe that it is “very important” to guard against the prohibition of the ACA’s clause that prevents health insurers from denying coverage for people with pre-existing conditions. Yet, the current presidential administration and the increasingly more conservative

Supreme Court are likely to “soldier on”, irrespective of the will of the American people.

In summary, all Americans will be adversely affected should the ACA be repealed. Those who are most vulnerable are likely to be punished most severely should the administration be successful in striking down a program that protects Americans’ health and well-being, and the approximately 50 million American citizens with chronic pain are extremely vulnerable,^{51,52} to say the least. According to a 2018 article by Stein and Allcorn, President Trump’s efforts to repeal the ACA do not represent sound public policy, but rather reflect his narcissistic and racially-driven hatred of President Barack Obama.⁵³ Paradoxically, a 2019 Kaiser Family Foundation poll found that although 79% of self-identified Republicans supported overturning the ACA, that figure decreased to only 45% if the repeal would potentially result in loss of coverage for pre-existing conditions.⁵⁴ Although the president has made “promises” that pre-existing conditions protection will continue under his “new health plan”, his failure to present such a plan to date has many doubting the veracity of this claim.⁵⁵ As health care providers who have dedicated our careers to advocating for vulnerable chronic pain patients, we have little recourse at this juncture, other than to simply question, “President Trump – have you no shame?”

Disclosure

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