



Beyond the Coverage Expansions: How the Lawsuit to Overturn the Affordable Care Act Would Further Harm Medicaid and CHIP Coverage of Children

by *Edwin Park*

Introduction

Texas vs. United States, the lawsuit to overturn the Affordable Care Act (ACA) in its entirety, continues to proceed apace through the federal courts¹, despite its extraordinarily weak legal reasoning². Most of the attention is rightfully focused on how the case could increase the number of uninsured in the nation by 20 million people, by eliminating the ACA's major coverage provisions such as the Medicaid expansion, the marketplace subsidies, the protections for people with pre-existing conditions and other market reforms, and the requirement that young adults can stay on their parents' health plans.³

But it is also important to recognize how the lawsuit could also strip away other lesser-known provisions of the ACA and inflict further, severe damage, including to children's coverage under Medicaid and the Children's Health Insurance Program (CHIP). Here are several examples:

Maintenance of Medicaid and CHIP eligibility for children.

The ACA prohibited states from lowering eligibility for Medicaid and CHIP coverage of children or from making it more difficult for eligible families to enroll through the end of fiscal year 2019. While the CHIP funding reauthorization bills enacted in 2018 subsequently extended this "stability" protection through 2027, they merely changed the end dates of the ACA provision.⁴ Overturning the entire ACA would eliminate the underlying maintenance of effort requirement and likely permit states to immediately start cutting children's eligibility or imposing more onerous application and renewal procedures that discourage enrollment.

Medicaid coverage of near-poor children.

Under the so-called "stairstep kids" provision, the ACA extended the requirement that states cover older children (aged 6-18) in Medicaid from 100 percent of the federal

poverty line to 138 percent of the federal poverty line. While some states already covered these children in Medicaid, others covered them through separate state CHIP programs. Moving these children to Medicaid allowed some families to receive better, more affordable care for their children by eliminating premiums and co-payments and making available Medicaid's comprehensive pediatric benefit known as Early and Periodic Screening, Diagnostic, and Treatment (EPSDT).⁵ It also reduced confusion among families and administrative burden for states, as some families had their younger children on Medicaid, with older siblings enrolled in separate state CHIP programs.

Medicaid coverage of former foster youth.

The ACA required states to extend Medicaid coverage to individuals leaving foster care up to age 26, as former foster youth are more likely to be uninsured and have complex medical needs than other young adults. Last year, Congress passed and the President signed into law a technical fix to clarify that this protection also applies to young adults who no longer reside in the state where they were in foster care.⁶ But as with the maintenance of effort requirement, the underlying provision was enacted by the ACA.

Simplified Medicaid and CHIP eligibility and enrollment systems and procedures.

The ACA included major requirements related to eligibility and enrollment in Medicaid and CHIP. For example, the ACA established a new uniform income counting system (known as Modified Adjusted Gross Income or MAGI) for most Medicaid beneficiaries (but not seniors and some people with disabilities) starting in 2014. In addition, the ACA prohibited asset tests for all MAGI individuals including children; a relatively small number of states still imposed burdensome asset tests on children in Medicaid and CHIP prior to the ACA that reduced participation among eligible families. Moreover, the ACA required states to use streamlined eligibility procedures to make it easier for eligible

individuals to enroll and stay enrolled in Medicaid, CHIP and the marketplaces. For example, Medicaid and CHIP regulations implementing this requirement eliminated the use of face-to-face interviews and required states to use “ex parte” renewals that rely on electronic information and data to lower the burden on families and ensure individuals stay enrolled.⁷ States have invested heavily and spent years in upgrading their systems to comply with these requirements.

Delivery system reforms to improve access and quality for children on Medicaid and CHIP.

The ACA provided a new Medicaid option to states to set up “health homes” to improve coordination of care for people with chronic conditions,⁸ many of which focus on children including those with complex medical needs and behavioral health issues.⁹ The ACA also created the Center for Medicare and Medicaid Innovation (CMMI) to test delivery system and payment reforms that can lower costs while increasing access to and quality of care. For example, CMMI recently announced funding opportunities to test approaches focusing on children and youth (called Integrated Care for Kids or InCK) and on pregnant and postpartum women with opioid disorders (called Maternal Opioid Misuse or MOM).¹⁰ The ACA also established the highly successful Maternal, Infant and Early Childhood Home Visiting (MIECHV) program, which provides home visits to at-risk pregnant women and parents of young children to support health and childhood development.¹¹ While not a Medicaid and CHIP provision per se, MIECHV and Medicaid can complement each other to support home visiting under a variety of approaches.¹² Federal funding for MIECHV has been further extended by Congress, but like the maintenance-of-effort requirement, the underlying MIECHV provision was in the ACA.

Transparency and public input for Medicaid and CHIP waivers.

The ACA directed the Secretary of Health and Human Services to promulgate regulations requiring public comments and public input at the state level prior to submission of a section 1115 waiver and at the federal level after waiver submission, as well as periodic reports and evaluation of implemented waivers. The subsequent regulations included specific requirements that states have public hearings, post waiver documents publicly and conduct a 30-day public comment period. It also required a federal 30-day comment period and the Centers for Medicare and Medicaid Services to post the waiver application and other relevant related materials.¹³ Public comments submitted under these regulations have been instrumental in recent federal court decisions invalidating approved section 1115 Medicaid waivers imposing harsh work reporting requirements in several states that would have significantly cut enrollment among individuals and families.¹⁴

Increased Medicaid rebates to lower federal and state prescription drug costs.

The ACA included provisions to strengthen the highly effective Medicaid Drug Rebate Program (MDRP) and thereby reduce federal and state Medicaid prescription drug costs.¹⁵ For example, the ACA raised the minimum base Medicaid rebate for brand-name drugs from 15.1 percent of the Average Manufacturer Price to 23.1 percent, starting January 1, 2010. The ACA also extended the Medicaid Drug Rebate Program (MDRP) to drugs furnished to Medicaid beneficiaries enrolled in managed care. Previously, the MDRP only applied to fee-for-service, even though most Medicaid beneficiaries are in managed care. Overturning the entire ACA would eliminate these important rebate provisions (as well as provisions lowering the cost of certain generic drugs) and thus raise net Medicaid drug costs. That would not only result in a substantial windfall to drug manufacturers but place greater fiscal pressures on states, which would likely lead to reduced access to needed care such as prescription drugs among low-income beneficiaries including children.

Endnotes

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- 2 Jonathan Adler and Abbe Gluck, “What the Lawless Obamacare Ruling Means,” New York Times, December 15, 2018, available at <https://www.nytimes.com/2018/12/15/opinion/obamacare-ruling-unconstitutional-affordable-care-act.html>.
- 3 Linda Blumberg, Matthew Buettgens, John Holahan, and Clare Wang Pan, “State-by-State Estimates of the Coverage and Funding Consequences of Full Repeal of the ACA,” Urban Institute, available at <https://www.urban.org/research/publication/state-state-estimates-coverage-and-funding-consequences-full-repeal-aca>.
- 4 Kelly Whitener, “HEALTHY KIDS and ACCESS Acts: Summary of Key Provisions Impacting Children” Georgetown University Center for Children and Families, March 15, 2018, available at <https://ccf.georgetown.edu/wp-content/uploads/2018/03/Healthy-Kids-Access-Acts-FINAL-1.pdf>.
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7 Kaiser Family Foundation, "Medicaid Eligibility, Enrollment Simplification, and Coordination under the Affordable Care Act: A Summary of CMS'S March 23, 2012 Final Rule," December 11, 2012, available at <https://www.kff.org/medicaid/issue-brief/medicaid-eligibility-enrollment-simplification-and-coordination-under-the-affordable-care-act-a-summary-of-cmss-march-23-2012-final-rule/>. See also Anna Kruk Corbin, "How a Small Provision of ACA Made a Big Difference for One Pennsylvania Family," Say Ahhh! Blog, Georgetown University Center for Children and Families, July 9, 2019, available at <https://ccf.georgetown.edu/2019/07/09/how-a-small-provision-of-aca-made-a-big-difference-for-one-pennsylvania-family/>.

8 Centers for Medicare and Medicaid Services, "Health Homes," available at <https://www.medicare.gov/medicaid/ltss/health-homes/index.html>.

9 American Academy of Pediatrics, "State Pediatric Medicaid and CHIP Initiatives: At-A-Glance Table," Updated June 2018, available at <https://medicalhomeinfo.aap.org/Documents/States-At-a-Glance%202018.pdf>.

10 Elisabeth Wright Burak, "CMS Innovation Center Releases Anticipated Funding Opportunities Focused on Children: Will Your State Apply?," Say Ahhh! Blog, Georgetown University Center for Children and Families, February 13, 2019, available at <https://ccf.georgetown.edu/2019/02/13/cms-innovation-center-releases-anticipated-funding-opportunities-focused-on-children-will-your-state-apply/>.

11 Health Resources and Services Administration, "Home Visiting," available at <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>.

12 Elisabeth Wright Burak, "How are States Using Medicaid to Pay for Home Visiting? New Paper Offers More Clarity," Say Ahhh! Blog, Georgetown University Center for Children and Families, January 24, 2019, available at <https://ccf.georgetown.edu/2019/01/24/how-are-states-using-medicaid-to-pay-for-home-visiting-new-paper-offers-more-clarity/>.

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14 Andy Schneider, "Medicaid Work Requirements: Another Win for Beneficiaries, Another Loss for CMS," Say Ahhh! Blog, Georgetown University Center for Children and Families, July 30, 2019, available at <https://ccf.georgetown.edu/2019/07/30/medicaid-work-requirements-another-win-for-beneficiaries-another-loss-for-cms/>.

15 For background on the Medicaid Drug Rebate Program, see Edwin Park, "How to Strengthen the Medicaid Drug Rebate Program to Address Rising Medicaid Prescription Drug Costs," Georgetown University Center for Children and Families, January 9, 2019, available at <https://ccf.georgetown.edu/2019/01/09/how-to-strengthen-the-medicaid-drug-rebate-program-to-address-rising-medicaid-prescription-drug-costs/>.

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