

# State Efforts To Protect The Affordable Care Act



STATE INNOVATION EXCHANGE





After a decade of implementation, the Affordable Care Act (ACA) has made health insurance and health care more available and affordable for tens of millions of people — many of whom will rely heavily on its provisions to deal with the public health crisis brought on by COVID-19. In fact, some states have begun to [reopen their health insurance exchanges](#) to increase coverage during the coronavirus outbreak.

No matter what we look like, where we live, or what's in our wallets, this pandemic reminds us that at our core, we are all just human. As our nation and our communities struggle to respond to this national emergency, we are reminded how important health care is to our long-term success. Our own health depends on the health of the person next to us, and the person next to them. Ensuring others can access care is how we take care of ourselves.

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Over the last four years, the ACA has been challenged by the Trump Administration. When Congress did not overturn the legislation, the Administration simply refused to implement key parts of the law, weakened it through executive order, and sought to challenge it through the courts. Even in the midst of this crisis, Trump said that he is still trying to overturn the ACA, suing in court to take health care coverage away from tens of millions of Americans at a time when they need it most. If successful, this lawsuit would take coverage away from [20 million](#) Americans and end protections for [130 million](#) people with preexisting conditions. The uncertainty and misinformation continue to create dangerous confusion that divides us at this critical time. State legislators across the country have taken action to protect and defend the health of their communities. They have joined together to implement proven solutions so that whether white, Black, Latino, or Asian, native or newcomer, everyone can get the care they need.

This memo outlines the attacks on the ACA, policy solutions at the state level, key messages, and additional resources for legislators.

# Trump Administration Attacks on the ACA

The Trump Administration, with a Republican Congress, took actions to destabilize the ACA by increasing the risk of [adverse selection](#); two examples of this include effectively [ending the individual mandate](#) by setting it at \$0 and expanding [short-term limited-duration \(STLD\) plans](#) from a stopgap insurance to a cheaper and less regulated alternative to an ACA plan.

The table below from the [Center on Budget and Policy Priorities](#) highlights some of the actions the Administration has taken to undermine the health care law.

Major Outcomes of ACA Repeal Bills	Administration Actions Advancing Similar Outcomes
<b>Ending the ACA's expansion of Medicaid</b>	Encouraging and approving Medicaid waivers that include eligibility restrictions, such as work requirements, that will cause large drops in coverage among low-income adults; encouraging further cuts through "block grant" waivers; floating a change to the federal poverty line that would cut Medicaid eligibility over time
<b>Ending or undermining various protections for people with pre-existing conditions</b>	Broadening availability of "short-term" and other plans exempt from key protections; offering states options to weaken essential health benefits and the risk adjustment program; raising limits on out-of-pocket costs (including for employer plans); encouraging states to adopt 1332 waivers further undermining protections; inviting states to participate in a wellness program "demonstration" that would allow insurers to charge higher premiums based on health status
<b>Sharply cutting marketplace financial assistance</b>	Adopting a change that will raise premiums, by cutting premium tax credit, for at least 7.3 million consumers; encouraging states to adopt 1332 waivers making large cuts to premium tax credits for lower income people; considering trying to end "silver loading," a practice that lowers premiums, out-of-pocket costs, or both for millions of marketplace consumers; floating a change to the federal poverty line that would cut premium tax credit and cost sharing assistance sharply over time
<b>Weakening or eliminating the federal role in promoting access to coverage</b>	Cutting advertising by 90 percent and in person consumer assistance by more than 80 percent; shortening open enrollment by half; creating new obstacles to maintaining marketplace coverage and enrolling in coverage through special enrollment periods; considering ending or limiting automatic re-enrollment for returning marketplace consumers; creating a climate of fear that is deterring immigrant families from enrolling in coverage they're eligible for



# State Legislation to Defend the ACA

Through work with state and national health advocacy partners, legislators have led the way to protect key ACA components so that everyone can stay covered. The following are examples of relevant legislation.

**Annual or Lifetime Limits:** States stopped insurers from re-imposing lifetime limits on benefits, which before the ACA forced many insurance holders to choose between bankruptcy and getting the care they needed.

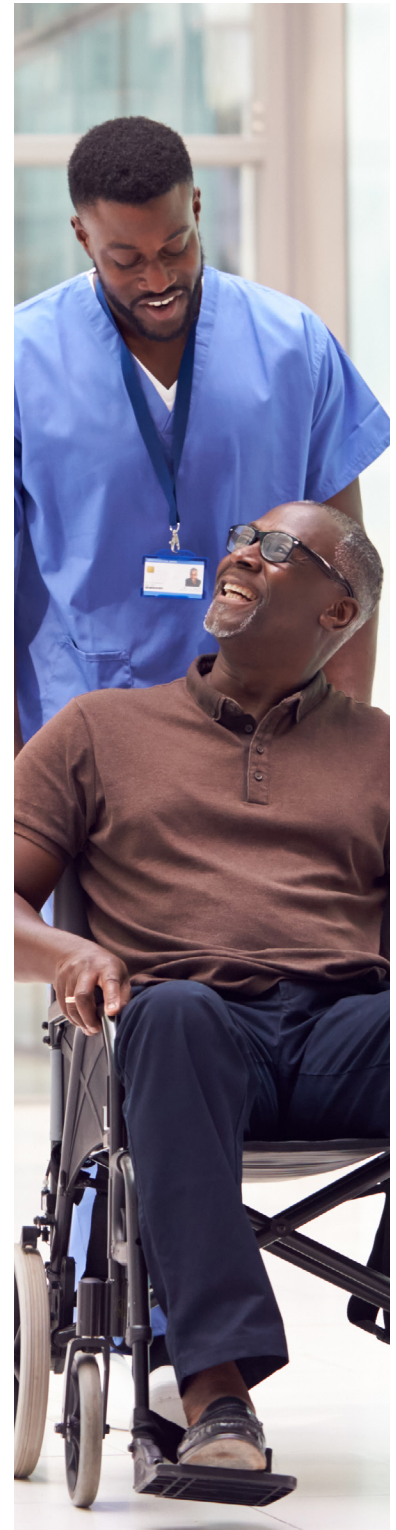
- [New Jersey](#), [Vermont](#), and [Washington](#) passed legislation to prohibit a health insurer from imposing annual or lifetime limits on essential health benefits or total benefits.

**Preexisting Conditions:** At least 14 states have taken steps to ensure health insurance providers cannot deny coverage to individuals with preexisting conditions.

- [Delaware](#), [Maine](#), [Vermont](#), and [Washington](#) have enacted legislation to prohibit preexisting condition provisions in health insurance policies and to guarantee issue and availability of coverage.

**Regulation of Non-ACA-Compliant Plans:** States must regulate more than just the plans in their ACA marketplace, as non-ACA compliant-plans increase the risk of [adverse selection](#) and create a loophole for insurers to get around state ACA protections. Regulation of short-term limited-duration (STLD) plans have been loosened at the federal level, and it is up to the states to provide strong regulations.

- [California](#) prohibits health insurers from offering STLD plans in the state.
- [Hawaii](#) does not allow STLD plans to be issued to anyone who was eligible to purchase a plan during open enrollment on the ACA marketplace.
- [Maryland](#) limits STLD plans to no more than three months and does not allow them to be extended or renewed.





**Expanded Premium Subsidies:** States have enacted legislation to expand the low-income population eligible to receive premium assistance subsidies.

- [Massachusetts](#) and [Vermont](#) subsidize individuals with incomes up to 300 percent of the federal poverty level (FPL).
- [Washington](#) subsidizes individuals up to 500 percent of the FPL.
- [California](#) provides about 25% of their advanceable premium assistance for individuals between 200 and 400 percent of the FPL and 75% allocated to individuals between 400 and 600 percent of the FPL.

**Cost Sharing:** State legislation limits cost sharing, which includes deductibles, copayments, and other non-premium related expenses.

- [Maine](#), [New Jersey](#), and [Vermont](#) have forced insurers to comply with cost sharing limits to the ACA dollar amounts on a fixed date.
- [Washington](#) applied a total dollar cap — \$8,200 for self-only coverage and \$16,400 for coverage that includes more than one individual — all indexed to the state's average increase in per-person premiums.

**Essential Health Benefits:** States can ensure essential health benefits remain covered.

- [Maine](#), [New Jersey](#), and [Washington](#) enacted legislation to protect emergency care, maternity and newborn care, mental health and substance abuse treatment, prescription drugs, preventative care and wellness programs, and more.

**State Individual Mandate:** Reinstating the individual mandate at the state level can provide an incentive for young and generally healthy individuals to remain in an individual insurance pool and lower premiums by preventing [adverse selection](#).

- [California](#), [New Jersey](#), and [Vermont](#) (and [as amended](#)) have enacted individual mandates.

**Marketplace Competition:** A handful of states either require certain insurers to participate or tie insurer eligibility for participation in public health plans (e.g., Medicaid, CHIP, and plans for public employees) to participation in the state's ACA marketplace.

- [Massachusetts](#), which as a state has one of the highest [ACA insurer participation numbers](#), requires health insurance carriers with 5,000 or more enrolled individuals (including dependents) to “annually to file a plan with the connector for its consideration, which meets the requirements for the connector seal of approval.”

**Anti-Discrimination:** In 2019, the Trump Administration took steps to significantly [weaken anti-discrimination provisions](#) within Section 1557 of the ACA. This would negatively impact LGBTQ rights (with potentially the greatest impact to transgender individuals), women's reproductive rights, and language access for individuals with limited English proficiency.

- [Hawaii](#), along with [21 other states](#), already has transgender protections codified into state law, so health insurance policies cannot discriminate based on actual or perceived gender identity.
- [Oregon](#) passed a law in 2019 to add broad anti-discrimination language to their insurance code in order to prevent discrimination based on actual or perceived race, color, national origin, sex, sexual orientation, gender identity, age, or disability.

**Rating Factors:** States have acted to make sure insurance companies cannot raise premium rates based on gender, health status, or occupation/industry.

- [Delaware](#) and [Maine](#) have passed laws to regulate permissible rating factors.



## Messaging

- As our nation and our communities struggle to respond to the COVID-19 pandemic, it is clear that our own health depends on the health of the person next to us, and the person next to them.
- As we celebrate the tenth anniversary of the Affordable Care Act, which expanded care to millions of Americans, we need leaders who will step up to make sure that everyone white, Black, Latino, or Asian, native or newcomer — has access to care.
- In the midst of the COVID-19 crisis, the Trump Administration continues attempts to overturn the health care law. The lies, confusion, and misinformation from President Trump are dangerous.
- Now is the time for leaders in state legislatures to unite across differences and make policy choices that help everyday people — not the richest 1% and a handful of corporations.
- We must ensure that everyone has access to affordable, quality care by creating a health care system that works for everyone — no exceptions.



# Additional Resources

## ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS (ASTHO)

- “Section 1332 Waivers: An Opportunity to Increase Access to Health Services Through Affordability” (June 2019)
- “States Act to Ensure Access to Care with Affordable Care Act in the Courts” (December 2019)

## CENTER FOR AMERICAN PROGRESS

- Center for American Progress: 50-state interactive tool about harm of ACA repeal

## COMMUNITY CATALYST

- “Progress on Health Coverage Disparities Stalls, Demanding a Data Refresh and Targeted Strategies” (March 2020)

“The Advocate’s Guide to: Health Insurance Reform”

- “The Advocate’s Guide to: Pre-Existing Condition Protections” (March 2019)
- “The Advocate’s Guide to: Essential Health Benefits” (April 2019)
- “The Advocate’s Guide to: Short-Term Limited Duration Insurance” (June 2019)

## COMMONWEALTH FUND

- “States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans” (May 2019)
- “The ACA’s Innovation Waiver Program: A State-by-State Look” (March 2020)
- “What Is Your State Doing to Affect Access to Adequate Health Insurance?” (February 2020)

## KAISER FAMILY FOUNDATION (KFF)

- “How Can Medicaid Enhance State Capacity to Respond to COVID-19?” (March 2020)
- “KFF Health Tracking Poll – February 2020: Health Care in the 2020 Election” (February 2020)

## PROTECT OUR CARE

- Protect Our Care 50-state fact sheets



STATE INNOVATION EXCHANGE

The State Innovation Exchange (SiX) is a national resource and strategy center that collaborates with state legislators to improve people’s lives through transformative public policy. SiX provides legislators with on-the ground support; creates tailored policy research, trainings, and communications guidance; and fosters collaboration between legislators—across chambers, across regions, and across state lines—and with grassroots movements.