

NATIONAL REVIEW

Yes, We Should Protect People with Pre-existing Conditions

There is a way to repeal Obamacare that accomplishes that goal.

Ramesh Ponnuru

November 16, 2016

President-elect Donald Trump has repeatedly said that he wants to replace Obamacare while keeping its protections for people with pre-existing conditions. I agree with Trump that Obamacare should be repealed and that people with pre-existing conditions should be protected, and [recently wrote here](#) about how these goals could be reconciled.

The key, in my view, is to alter an Obamacare regulation that prevents insurers from charging the sick more than the healthy. That regulation gives healthy people an incentive not to buy insurance: They can always buy it when they get sick. But insurance markets won't work if only sick people buy insurance. That's the reason the Obamacare legislation coupled this regulation with the infamous "individual mandate" requiring most people to buy health insurance.

Many Republicans have suggested a different regulation: Insurers could be required to charge people with pre-existing conditions the same as healthy people so long as those people had maintained their insurance coverage. That regulation would not create an incentive to forgo coverage; it would add to the incentive to get it. And so the mandate would no longer be needed.

At the same time, I suggested, the government should give people who do not have access to employer-based coverage a tax credit that would allow them to purchase catastrophic health insurance (or more extensive coverage if they supplement that credit with their own money). This coverage would no longer be subject to Obamacare's definition of essential benefits; the states would return to being the primary regulator of benefits, as they were before Obamacare. But individuals would be free to buy insurance from other states, which would be particularly helpful if their own states' regulations were too costly.

Michael Cannon, the Cato Institute's health-policy expert (and a friend of mine), [disagrees](#) with both Trump and me. He raises four objections to my suggestions and advances his own alternative.

The first objection is that the new regulation would create perversities of its own. Every year the sickest people would choose the most generous plan, and insurers would try to make their policies unfriendly to the sick to counteract their efforts. This concern seems greatly overstated. The regulation should be drawn to provide a narrow protection: If you had maintained your

insurance coverage, getting sick would entitle you to get coverage comparable to what you had at the same rate as healthy people. That should nullify this objection.

Cannon's second point is that the tax credit is the equivalent of an individual mandate. The mandate fines you for not buying insurance. The credit gives you a tax break for buying insurance. Either way, you pay more taxes if you don't buy insurance. So are they really the same thing? No. Obamacare attempted to make it illegal for people to choose not to buy health insurance. That's why the individual mandate went to the Supreme Court. The mortgage-interest deduction didn't, even though you could apply the same argument to try to present it as a "house-buying mandate." Maybe the mortgage-interest deduction is good policy and maybe it isn't, but it's not a mandate. The same goes for a tax credit to buy catastrophic health insurance.

Third, Cannon argues that getting rid of Obamacare's employer mandate and providing a tax credit to people who don't have employer-based coverage would give employers an incentive to drop their plans. But we have had very little of such employer dumping even though the employer mandate has not been put into effect and individuals without employer coverage have been able to use tax credits on Obamacare's exchanges. Again, the concern seems exaggerated.

Fourth, Cannon says that replacing Obamacare along the lines I've discussed would "entrench Obamacare's worst features into federal law, permanently, by giving them a Republican imprimatur." To accept this conclusion requires both buying those three prior points and losing all sense of perspective. The replacement I'm talking about would get rid of the individual and employer mandates, the essential-benefits regulations, federal support for the exchanges, the medical-device tax, the Independent Payment Advisory Board, and more. The federal government would have a smaller distortionary role in health care than it did before Obamacare, let alone than the one it has played since then. For example, the federal government would no longer be giving people with access to employer coverage a much larger tax break than people without such access, and it would do a lot less to push people to buy the most expensive health plans available.

Republicans are leery of simply abolishing Obamacare's protections for people with pre-existing conditions for both humanitarian and political reasons. Cannon proposes a way to handle that problem: Abolish as much of Obamacare as possible except for its regulations on pre-existing conditions. "Americans will see the actual costs of those supposedly beneficent and popular provisions when they cause insurance markets to collapse. The damage would be so swift and severe, Congress would quickly repeal the pre-existing-conditions provisions, filibuster or no filibuster."

Either you can see instantly that this strategy is a terrible one or you can't, so there's not much to say about it. Besides this: I cannot imagine House and Senate Republicans' pursuing it.