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Why Republicans Must Repeal Obamacare's 'Pre-existing Conditions' Provisions

Keeping the unsustainable pre-existing-conditions provisions would accelerate the insurance 'race to the bottom' created by Obamacare.

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Donald Trump hadn't been president-elect for a week when he appeared to abandon his oft-repeated pledge to repeal Obamacare in its entirety. In interviews with the _Wall Street Journal_ and _60 Minutes_, Trump appeared to want to keep, or at least to be willing to accept, the Affordable Care Act's centerpiece: it's supposed prohibition on discrimination against health-insurance applicants with pre-existing conditions.

Ramesh Ponnuru, my friend and a senior editor of these pages, says the downside of Trump's triangulation is that retaining those provisions "makes it much, much harder to get rid of the individual mandate" — as if the mandate were the bigger problem. On the contrary, the pre-existing-conditions provisions are the centerpiece of Obamacare. They are the reason the individual-mandate exists. It is those provisions, more than the mandate, that are driving premiums higher. It is those provisions, and not the mandate, that are destabilizing health-insurance markets, reducing choice, and causing insurers to flee. Most important (see below), it is those provisions, not the mandate, that are causing a race to the bottom where sick patients are seeing the coverage they value disappear from their Obamacare plans. If you want the sick to have more secure access to care, if you want to repeal Obamacare, the pre-existing-conditions provisions must go.

Yet Ponnuru argues "you don't have to get rid of protections for people with pre-existing conditions altogether to scrap Obamacare." Congress could simply modify this central provision of the law by forcing insurers "to cover people with pre-existing conditions on the same terms as everyone else so long as they had maintained insurance coverage beforehand." In other words, Obamacare imposes price controls on premiums for both previously insured and previously uninsured applicants in the individual market. This approach would allow actuarially fair premiums for previously uninsured applicants, but continue to impose price controls on premiums for the previously insured who switch plans. As I wrote when House Republicans floated this idea, it could create an even_faster_ race to the bottom than Obamacare already has.

If the sickest patients can hop from plan to plan knowing that insurers could charge them no more than anyone else, then each year many will choose whichever plan offers the most attractive coverage for their ailments. Whichever insurer provided the most attractive coverage to the sick would end up with lots of enrollees who pay far less in premiums than they generate in

claims. That's not sustainable. To keep from going out of business, insurers would start competing to *not* offer the best coverage to the sick. Year after year, sick people would find their coverage getting progressively worse, not better. Just like under Obamacare. In fact, the race to the bottom could happen even faster, because Republicans would jettison mechanisms Obamacare uses to slow the degradation of coverage. Or should Republicans retain those parts of Obamacare, too?

Speaking of retaining parts of Obamacare, Ponnuru suggests Trump's replacement plan could offer refundable health-insurance tax credits to help consumers afford individual-market coverage. As I explain here, such tax credits would preserve much of Obamacare's entitlement spending and are indistinguishable from an individual mandate. Both a mandate and a health-insurance tax credit effectively penalize taxpayers who fail to purchase a government-defined health-insurance plan. The effective penalty under a Republican tax credit would in many cases be higher, and in all cases would be more strictly enforced, than Obamacare's mandate penalties.

As if all that weren't enough, the combination of health-insurance tax credits and the repeal of Obamacare's employer mandate could cause many employers to drop coverage, which would mean the approach Ponnuru suggests could trap potentially tens of millions more Americans in that quicker-than-Obamacare race to the bottom.

We're not talking about a "repeal and replace" plan, here. This is a plan to entrench Obamacare's worst features into federal law, permanently, by giving them a Republican imprimatur.

Congress and President Trump should eliminate Obamacare's pre-existing conditions provisions because they are the principal barrier to providing secure access to coverage for the sick. Any repeal bill will of course provide some safety net for victims of Obamacare — i.e., patients with expensive conditions for whom Obamacare failed to provide secure, sustainable access to care. There are ways to do so without preserving Obamacare's most harmful and unpopular features.

If any Republicans want to keep the pre-existing-conditions provisions, try this: Have Congress send Trump the partial-repeal bill Obama vetoed earlier this year. It would have repealed Obamacare's individual mandate, employer mandate, exchange subsidies, Medicaid expansion, many of the taxes, and much of the corporate welfare, but left the pre-existing-conditions provisions alone. If Trump signs it, 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.

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