The Affordable Care Act, COVID-19, and Health Care Insurance for Children

Eileen K. Fry-Bowers, PhD, JD, RN, CPNP, FAAN

KEY WORDS
ACA, COVID-19, children, Medicaid, CHIP

INTRODUCTION

Despite numerous legal and political challenges over the past decade, the Patient Protection and Affordable Care Act (ACA; Library of Congress, 2010) has been integrated into the health system of the United States and has played an important role in improving child health in this country by increasing access to health care for millions of children. The ACA has also provided a health care lifeline to children and families during the coronavirus disease 2019 (COVID-19) pandemic. This policy brief reviews the legal status of the ACA, explores the impact of COVID-19 on children's access to health insurance, discusses recent legislation supporting child health, and considers the future status of child health insurance coverage and access to care.

BACKGROUND

In 2012, the U.S. Supreme Court held that the minimum essential coverage provision of the ACA, known as the individual mandate, was a valid exercise of Congressional authority to tax (Supreme Court of the United States, 2012). This provision required most people to maintain a minimum level of health insurance coverage and subjected those who did not to a shared responsibility payment or penalty collected by the Internal Revenue Service. The Tax Cuts and Jobs Act (Library of Congress, 2017) later set this payment or penalty at $0. Subsequently, in February 2018, 18 state attorneys general and two governors, joined by two individuals, brought suit asserting that because the penalty had been reduced to $0 and no longer produced revenue for the federal government, the mandate could not be saved under Congress' taxing power (Casetext, 2018). Furthermore, they argued that because the individual mandate was foundational to the ACA, the entire law should be invalidated. In December 2018, a federal district judge court agreed with those bringing the lawsuit (plaintiffs) and invalidated the statute. On appeal, the U.S. Court of Appeals for the Fifth Circuit partially affirmed the district court's ruling but returned the case to the lower court for additional analysis (Fifth Circuit Court of Appeals, 2019).

Defendants, including 16 state attorneys general and the U.S. House of Representatives, appealed the Fifth Circuit's decision to the U.S. Supreme Court (Supreme Court of the United States, 2021). On June 17, 2021, in a 7–2 decision, the court determined that the plaintiffs lacked standing to bring the case to court (standing is a legal doctrine that arises from Article III of the U.S. Constitution and limits federal courts to adjudicating actual cases or controversies. Standing requires that the party[ies] suing demonstrate an [1] "injury in fact, [2] that is fairly traceable to the challenged conduct of the defendant, and [3] that is likely to be redressed by a favorable judicial decision." Lujan versus Defenders of Wildlife, 504 U.S. 555 [1,992]). It did not address the legal questions regarding the constitutionality of the ACA.

As a result, the ACA remains in effect. Supreme Court of the United States (2021) represents the court's third opportunity over the past decade to broadly dismantle the ACA and represents the third time the court opted not to do so. As noted above, the court upheld the statute in 2012 in *NFIB versus Sebelius* (5–4) and again in 2015 in *King versus*

Eileen K. Fry-Bowers, Professor and Associate Provost, University of San Diego, Hahn School of Nursing and Health Science, San Diego, CA.

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Eileen K. Fry-Bowers, PhD, JD, RN, CPNP, FAAN, Hahn School of Nursing and Health Science, University of San Diego, 5998 Alcalá Park, Hughes Administration Center 212B, San Diego, CA 92110; e-mail: efrybowers@sandiego.edu
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TABLE. Preventive services covered by all Affordable Care Act Marketplace health care plans without copayment or coinsurance

Preventive Service	Age
Alcohol, tobacco, and drug use assessments	Adolescents
Autism screening for children	18 and 24 months
Behavioral assessments for children ages	0–11 months 1–4 years 5–10 years 11–14 years 15–17 years
Bilirubin concentration screening	Newborns 0–28 days
Blood pressure screening for children ages	0–11 months 1–4 years 5–10 years 11–14 years 15–17 years
Blood screening	Newborns
Depression screening for adolescents	Beginning routinely at age 12
Developmental screening for children	< 3 years
Dyslipidemia screening for all children	Once between 9 and 11 years; once between 17 and 21 years; and for children at higher risk of lipid disorders
Fluoride supplements	Children without fluoride in their water source
Fluoride varnish	All infants and children as soon as teeth are present
Gonorrhea preventive medication (eyes)	Newborns
Hearing screening	Newborns; and regular for children and adolescents as recommended by their provider
Height, weight, and body mass index measurements are taken regularly	All children
Hematocrit or hemoglobin screening	All children
Hemoglobinopathies or sickle cell screening	Newborns
Hepatitis B screening	Adolescents at higher risk
HIV screening	Adolescents at higher risk
Hypothyroidism screening	Newborns
Pre-exposure prophylaxis HIV prevention medication	HIV-negative adolescents at high risk for getting HIV through sex or injection drug use
Immunizations: doses, recommended ages, and recommended populations vary • Chicken pox (varicella) • Diphtheria, tetanus, and pertussis (DTaP) • Hemophilus influenza Type b (Hib) • Hepatitis A • Hepatitis B • Human papillomavirus • Inactivated poliovirus • Influenza (flu shot) • Measles • Meningococcal • Mumps • Pneumococcal • Rubella • Rotavirus	Children aged from birth to 18 years
Lead screening	Children
Obesity screening and counseling	Children and adolescents aged 6 years and older
Oral health risk assessment	Young children aged from 6 months to 6 years
Phenylketonuria screening	Newborns
Sexually transmitted infection prevention counseling and screening	Adolescents at higher risk
Tuberculin testing for children at higher risk of tuberculosis ages	0–11 months 1–4 years 5–10 years 11–14 years 15–17 years
Vision screening	All children

Note. *Source: Healthcare.gov. (2021). Preventive care benefits for children. Retrieved from* https://www.healthcare.gov/preventive-care-children/

Burwell (6–3) (Supreme Court of the United States, 2015), the details of which are beyond the current discussion. Moreover, with each legal decision, the majority has grown, even as the court's composition has shifted in a conservative direction. The court may be signaling that it believes the legislative and executive branches, which are politically accountable to the electorate, are the correct branches of government to address action on the ACA (Keith, 2021a).

THE ACA AS FIXTURE OF U.S. HEALTH CARE

The ACA remains well-established in the U.S. health system, and widespread disruption of the system, especially impacting Medicaid, Medicare, and the insurance markets, would have occurred if the plaintiffs in *California versus Texas* had succeeded (Keith, 2021a). Because of the ACA, more than 20 million people have gained health insurance through the expansion of Medicaid in 38 states, including Washington DC, and through policies that increased enrollment in private coverage via the subsidized health insurance marketplaces. Moreover, insurance market reforms, including protections for people with preexisting conditions and disabilities, and the provision that allows young adults to remain on their parents' plans until the age of 26 (Center on Budget and Policy Priorities, 2019) have also impacted coverage. Notably, under the ACA, streamlined enrollment and renewal processes for Medicaid and Children's Health Insurance Program (CHIP), and support for navigators, and enhanced outreach, which promotes access to private insurance in addition to Medicaid and CHIP, have resulted in significant improvement in the number of children insured.

The uninsured rate among children in 2016 had fallen to 3.6 million, which is the lowest on record (Burak, Clark, & Roygardner, 2019). Health insurance improves health, enhances health care access and quality, and reduces unmet needs among children (Flores et al., 2017). However, during the former administration, a series of executive orders, section 1115 Medicaid demonstration waivers, and guidance letters issued by the Centers for Medicare and Medicaid Services hobbled outreach and hampered enrollment among adults. By 2019, the uninsured rate among children had risen to over four million (Alker & Roygardner, 2019; Burak et al., 2019). When parents seek and gain coverage, children benefit, and when parents are burdened or lose coverage, children are negatively impacted (Fry-Bowers, 2020).

COVID, THE ACA, AND MEDICAID

The COVID-19 pandemic has further revealed the importance of the ACA and the nation's safety net. Almost 10 million people enrolled in Medicaid and CHIP between February 2020 and January 2021, bringing the total enrollment of these programs to 80.5 million, a record high, with approximately half of all enrollees being children (Centers for Medicare and Medicaid Services, 2021). Furthermore, 31 million people were enrolled in coverage directly relating to the ACA, which is also a record, with 11.3 million people enrolled in marketplace plans and 14.8 million enrolled in Medicaid through expansion under the ACA (Assistant Secretary for Planning and Evaluation, Office of Health Policy, 2021).

The increase in Medicaid enrollment is likely driven by pandemic-related job and income loss as well as section 6,008 of the Families First Coronavirus Response Act (Library of Congress, 2020), which provides states adhering to Medicaid's Maintenance of Effort requirement with a temporary 6.2% payment increase in Federal Medical Assistance Percentage funding. Similarly, rising enrollment in marketplace plans may be attributable to loss of employer-sponsored coverage (Democrats, Energy and Commerce Committee, 2020), a COVID related special enrollment period and increased funding for navigators and outreach authorized through executive order by President Biden (Federal Register, 2021), and technical guidance released by Centers for Medicare and Medicaid Services (Keith, 2021b).

THE AMERICAN RESCUE PLAN ACT OF 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARPA; Library of Congress, 2021), a $1.9 trillion COVID-19 relief package that builds on the ACA and the existing safety net. Significant health insurance coverage provisions include (1) a temporary increase in tax credits to support enrollment in the private insurance market and a temporary increase in Medicaid Federal Medical Assistance Percentage to encourage the 12 states that have not yet expanded Medicaid to do so, both of which may encourage enrollment of children; (2) a new state option to extend Medicaid/CHIP coverage for postpartum women from 60 days–12 months, acknowledging the mounting evidence that extended postpartum care improves the immediate and long term, the well-being of mothers and children, especially among families at greatest risk for poor health outcomes; and (3) a temporary increase in federal Medicaid matching funds for home and community-based services, allowing children with disabilities to remain at home and in their communities (First Focus, 2021). Moreover, ARPA expands pediatric mental health care access and the Maternal, Infant, and Early Childhood Home Visiting program (Community Catalyst, 2021). In addition to providing much-needed support to mitigate the impacts of the pandemic, ARPA has been referred to as the "biggest policy gain for children in decades" (First Focus, 2021). Additional key provisions aimed at income, nutrition, and housing support will reduce child poverty, profoundly impacting child development, health, and well-being (Johnson, Riis, & Noble, 2016; Box).

BOX. American Rescue Act Provisions that provide support for children and families

Income

A 1-year expansion of the Child Tax Credit paid out in installments

A third of one-time direct cash payment with eligibility expanded to mixed status households and to adult dependents who were not included in previous coronavirus disease relief legislation

Housing

$27.4 billion for rental assistance

$10 billion for homeowner assistance

$5 billion for Section 8 housing vouchers

$5 billion for homelessness assistance

$5 billion for utility assistance

$800 million set aside under the Elementary and Secondary Education Act to provide wrap around services for students experiencing homelessness

Nutrition

Extension through September 30, 2021 of the 15% Supplemental Nutrition Assistance Program benefit increase under the Families First Coronavirus Response Act

$880 million in additional funds for the Special Supplemental Nutrition Program for Women, Infants, and Children

Note. *Source: King, K. (2021). What the American Rescue Plan Act means for children and families. In Defense of Children. Retrieved from* https://www.childrensdefense.org/blog/american-rescue-plan-act/

MOVING FORWARD

The current administration has signaled a desire to "protect and strengthen Medicaid and the ACA" (Federal Register, 2021), and Congress continues to consider legislation that would improve and enhance the ACA (Keith, 2021c). Even so, lawsuits over the ACA and associated regulations persist (Jost & Keith, 2020). Although these actions pose a less existential threat to the full statute, litigation creates uncertainty and, if successful, will undermine important provisions. For example, in the case *Kelley versus Becerra* (formerly *Kelley vs. Azar*) (CourtListener, 2020), currently before the same federal district judge that presided over *Texas versus United States*, the plaintiffs are challenging the requirement that health insurance companies cover certain preventive services and vaccines (Table), which could significantly impact pediatric well-child care. Poor access to preventive services results in suboptimal health outcomes for children (Flores et al., 2017). Pediatric health care providers must continue to monitor child and family access to health insurance, especially within the context of the pandemic and subsequent recovery, and share this information with policymakers to ensure child well-being and improve overall child health outcomes.

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