

# POLICY *focus*

RECIPES FOR RATIONAL GOVERNMENT

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## Pre-Existing Conditions

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### Introduction

Americans are compassionate and rightfully concerned for our friends and neighbors with costly health conditions. That's why there's so much support for rules in the Affordable Care Act that prohibit insurance companies from denying coverage or charging higher premiums to anyone due to a pre-existing condition. More than **7 in 10** Americans say these protections are "very important."

But there's widespread misinformation and misunderstanding about the scope of the problem of pre-existing conditions and the impact of the ACA's rules. Most Americans with health conditions, even newborns, were protected from medical underwriting and coverage denials *before* the ACA passed, either because they were insured through a large group plan, regulated by federal laws that predate the ACA, or through Medicare or Medicaid.

While the ACA's rules helped a relatively small number of people, they wreaked havoc on insurance markets for everyone else. In fact, they fundamentally changed how health insurance works, from protecting people from unexpected loss to a voluntary (and unsuccessful) attempt at socializing everyone's healthcare costs.

How has this played out? The ACA rules on pre-existing conditions were the biggest factor in premium increases, imbalanced insurance pools, and insurer exits from the ACA exchanges, ultimately leaving consumers with little or no choice in health plans. There are better ways to help those with pre-existing conditions. Americans should channel our concern for those facing costly health conditions toward a more focused solution that doesn't come with the harms of the ACA rules.

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## Why You Should Care

It's important to protect Americans with pre-existing conditions, but to do so in the right way, without destroying insurance markets or burdening other Americans. The ACA rules, while popular, are the wrong solution.

- **The benefits have been oversold:** While some politicians and media have suggested that the ACA rules on pre-existing conditions impact more than 100 million people, the real number is much lower, perhaps as low as 500,000. While every person counts, it's important to understand the proper scope of the problem in order to find solutions.
- **The consequences are deep and widespread:** The rules on pre-existing conditions have contributed to higher premiums and shifted the balance of insured pools by discouraging people from buying insurance when healthy and instead waiting until they are sick. This has burdened insurance markets to the point that many insurance companies have exited the market, leaving all consumers with fewer choices.
- **There are better ways to protect people:** Market competition can drive costs down for the vast majority of consumers. States are in the best position to manage programs aimed at helping those with costly conditions who lack access to insurance coverage. For them, there should be a dependable safety net.

## Background

### The Affordable Care Act and Pre-existing Conditions

In 2010, Congress passed and President Obama signed the Affordable Care Act (ACA), a major health reform law. The ACA changed nearly everything about the way health insurance is bought and sold in the United States: It mandated that everyone maintain coverage or pay a penalty (which was later reduced to zero in the tax reform law of 2018). It required all plans to cover certain benefits as defined by the federal government. It provided federal dollars for an expansion of the Medicaid program and for subsidies for private insurance sold via “exchanges.”

Perhaps most notably, the Affordable Care Act put two new regulations into place that were intended to protect people with pre-existing conditions. First, the law requires “guaranteed issue,” meaning all insurance carriers must take all comers. No one can be denied coverage for any reason, including a poor health status or history. Second, the law requires “community rating,” which means insurers cannot offer different prices to members based on health status or history. (In other words, they cannot charge sick people higher premiums than healthy people.)

These requirements are generally viewed favorably, but they are often misunderstood. Keep reading to learn more about pre-existing conditions, how many Americans have them, and the effects of the ACA's new rules.

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## What Is A “Pre-Existing Condition?”

As the term implies, a pre-existing condition is simply any health condition that existed before the start of insurance coverage. Although some insurance companies maintained lists of conditions that they consider under this term, there is no authoritative list.

## What About Babies?

In 2017, late-night show host Jimmy Kimmel shared the emotional story of his son, Billy, who was born with a congenital heart defect. Billy required very expensive health care immediately upon birth, including multiple operations. It's every parent's nightmare.

Fortunately for the Kimmel family, their insurance coverage existed before Billy's birth, so his condition would not be considered pre-existing. New babies can be added to their parents' insurance plans within 30 days of birth at standard insurance rates, with **no exclusions for any health conditions**. While Jimmy Kimmel depicted this personal story as evidence of the Affordable Care Act's benefits, it is actually the 1996 Health Insurance Portability and Accessibility Act (HIPAA) that prohibits medical underwriting and coverage denials for newborns or other people changing insurance plans (more on this below).

## How Many People Have Pre-Existing Conditions?

Millions of Americans suffer from various health conditions, often managing and receiving treatment for more than one condition at a time. The more important question related to public policy is this: “How many people faced barriers to insurance coverage due to pre-existing conditions?”

The Obama Administration touted the benefits of the ACA's new rules, claiming that **129 million Americans** would be affected, but this is a gross misrepresentation. In fact, when Democrats **misused this figure** to argue that 129 million Americans could be denied coverage absent the ACA, they earned “Four Pinocchios” from the *Washington Post* fact checker.

The reality is that many Americans with pre-existing health conditions had access to affordable insurance coverage before the ACA.

**About half** of all Americans use a large group plan provided by their employer (or the employer of a spouse/parent). While there are problems with this employer-centric system, it is—and was, before the ACA—highly regulated.

The **portability provisions in HIPAA** protect employees and their families as they change jobs or change insurance plans. It prohibits insurance carriers from discriminating against new enrollees based on health status, and it guarantees the right to buy coverage in the individual (non-group) insurance market if no group coverage is available and if the person(s) seeking coverage have exhausted COBRA coverage. COBRA is a workplace benefit that allows workers to continue coverage, albeit they have to pay their full premiums themselves, after leaving/losing a job.

**Another approximate third** of the country is insured by government programs—namely Medicare (nearly everyone over age 65) and Medicaid (for low-income people, with eligibility

rules varying by state). These programs have never discriminated on the basis of health status or excluded coverage for any health condition.

But what if you work for yourself, or an employer who doesn't offer health coverage? What if you are not eligible for any government coverage? These Americans would find themselves in the individual insurance market, the only place where pre-existing conditions might act as a barrier to coverage before the ACA.

Writing for the Wall Street Journal, health policy expert Betsy McCaughey examined the pre-ACA individual market for insurance and concluded that **approximately 500,000** Americans with pre-existing conditions lacked access to coverage before the ACA. This is not an insignificant number of people, but it is a far cry from the **"1 in 2 Americans"** estimate used to overstate the effect of the ACA.

While pre-existing conditions loom large in our political discourse—likely because of the unenviable and difficult burden of poor health—the scope of the problem isn't as large as has been represented. Most Americans (**63 percent**) who are counted among those with new insurance coverage as a result of the Affordable Care Act have been added to the rolls of Medicaid, not private insurance. And in the world of private insurance, most coverage gains are attributable to federally-funded subsidies to help eligible consumers afford plans, according to **a study** by Jonathan Gruber, one of the ACA's chief architects.

Likely because most Americans with health conditions faced no coverage barriers before the ACA, the law's rules on pre-existing conditions **did not significantly add** to the number or portion of Americans who have insurance coverage.

### **The Downside to "Guaranteed Issue" and "Community Rating"**

As discussed, the ACA's solution to this problem was to institute the new rules of guaranteed issue and community rating. While these rules have provided a new protection for a relatively small portion of American insurance consumers, they've come with other consequences that have been felt across the market.

Traditionally, insurance—in any context—is a backstop against unexpected costs. Consumers buy car insurance to protect them financially in the event of damage to their cars. Similarly, we buy homeowner's insurance to insure against property damage or theft in our homes.

Requiring health insurance companies to sell policies to everyone, even people with costly health conditions, is like requiring car or homeowner's insurance companies to sell policies to people whose cars or homes have already been damaged or destroyed. In these cases, the "risk" (an insurance term) of high claims is certain. In other insurance markets, we know it makes no sense to impose such requirements.

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The result of the ACA rules on pre-existing conditions has been clear: They removed the incentive for consumers in the individual market to obtain coverage before developing any health issues. This resulted in a less healthy pool of insured people (and a **more healthy uninsured population**), and much higher average premiums.

Previously, relatively healthy consumers could buy individual insurance plans affordably. **EHealthInsurance** reports that the average monthly premium in 2013, the last year before the ACA went fully into effect, was \$197 for individuals and \$426 for families. EHealth reports that in the first three years of the ACA, these premiums increased to \$393 and \$1,021, respectively.

While many factors, including other new regulations in the ACA, contributed to higher insurance costs, a **study by Milliman** shows that the provisions of guaranteed issue and community rating *alone* would contribute to a 20-45 percent increase in insurance premiums, making them the biggest driver of higher insurance costs.

Insurance companies failed to properly respond to these new rules. While premiums increased dramatically, it was still not enough to cover the extremely high cost of claims associated with a sicker insured population. As a result, many insurance companies **reported financial losses and exited the ACA exchanges**. This left all consumers—including people with pre-existing conditions—with fewer choices. Today about **29 percent** of all ACA consumers have only one carrier in their exchange.

In short, guaranteed issue and community rating have destroyed the individual insurance market. Despite this, they remain the most popular piece of the ACA.

## **Better Solutions**

Unexpected healthcare costs can be debilitating, and sadly anyone can experience an accident or diagnosis that threatens not only his or her life, but also his or her finances. Carrying health insurance is a responsible decision for most people.

However, sometimes people still find themselves in a difficult situation, without insurance coverage and facing a costly condition. Whatever circumstances led to this, we still don't want to see our friends and neighbors without access to the resources they need.

But there's a better solution than the ACA's rules that turned health insurance upside down. We should repeal the ACA and return insurance regulation to the state level, where it belongs. We should unlink insurance coverage and employment, so consumers aren't forced to change plans simply because they change jobs.

Market competition can drive costs down for the vast majority of consumers, removing the need for widespread taxpayer-funded subsidies and making more resources available for those with the greatest needs. States are in the best position to manage programs aimed at helping those with costly conditions and no other avenue to insurance coverage. For them, there should be a dependable safety net.

## What You Can Do

### Get Informed

Learn more about health care reform. Visit:

- [Independent Women's Forum](#)
- [Galen Institute](#)
- [Foundation for Government Accountability](#)

### Talk to Your Friends

Help your friends and family understand these important issues. Tell them about what's going on and encourage them to join you in getting involved.

### Become a Leader in the Community

Get a group together each month to talk about a political/policy issue (it will be fun!). Write a letter to the editor. Show up at local government meetings and make your opinions known. Go to rallies. Better yet, organize rallies! A few motivated people can change the world.

### Remain Engaged Politically

Too many good citizens see election time as the only time they need to pay attention to politics. We need everyone to pay attention and hold elected officials accountable. Let your Representatives know your opinions. After all, they are supposed to work for you!

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### ABOUT INDEPENDENT WOMEN'S FORUM

Independent Women's Forum (IWF) is dedicated to building support for free markets, limited government, and individual responsibility.

IWF, a non-partisan, 501(c)(3) research and educational institution, seeks to combat the too-common presumption that women want and benefit from big government, and build awareness of the ways that women are better served by greater economic freedom. By aggressively seeking earned media, providing easy-to-read, timely publications and commentary, and reaching out to the public, we seek to cultivate support for these important principles and encourage women to join us in working to return the country to limited, Constitutional government.

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