The Patient Protection and Affordable Care Act: *Reconciling Policy, Politics and Implications of Repeal in Arizona*

A Two-Part Report

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Children's Action Alliance is an independent voice for Arizona children at the state capitol and in the community. CAA works to improve children's health, education, and security through information and action. Visit us online at www.azchildren.org.

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Policy and Politics

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Executive Summary

The Patient Protection and Affordable Care Act (ACA) was signed into law by President Barack Obama on March 23, 2010. This is one of the most consequential pieces of health reform and legislation in the history of U.S. health care since Medicaid and Medicare which were established in 1965. The ACA sought to improve upon three quintessential aspects of American health care—accessibility, affordability, and quality. Progress has been made toward strengthening each of those three domains for both Arizonans and all Americans who rely on it. Despite persistent criticisms and repeated attempts to undermine or sabotage the law, it remains the beating heart of American health care.

At the time of publication, two important factors impact the ACA and those who depend on it for coverage. The first is that the fate of the ACA hinges upon the decision of yet another case before the Supreme Court of the United States (SCOTUS), *California v. Texas*, set to be heard in Fall 2020. Arizona Attorney General Mark Brnovich is a plaintiff in this case, which has the potential to overturn some, if not all, of the ACA.

The second is the impact of the COVID-19 pandemic. In the midst of an economic downturn and record unemployment, 27 million newly uninsured individuals are projected to need health insurance coverage as of May 2020. For most, Medicaid and the plans and subsidies offered through the ACA Marketplaces will serve as their primary options. Though not originally intended for this purpose, the ACA is set to serve as a critical safety net for many who lack affordable health insurance options during these unprecedented times.

A full repeal of the ACA would have catastrophic consequences for the American people. In addition to recent estimates that more than 23 million people who would lose coverage, repeal would eliminate essential consumer protections, Medicaid Expansion, Health Insurance Marketplaces, and extension of Dependent Coverage to age 26. Before the COVID-19 crisis erupted, coverage losses for Arizonans were estimated to be 297,000; additional coverage losses due to the pandemic have increased this estimate to 363,000.

The aim of this report is to articulate the objective gains, lessons learned, and implications of ACA repeal for Arizonans. It is best distinguished in two halves; the first, *Policy and Politics* offers a primer on the ACA and five key provisions, reflective of both national and state-level historical context. The second half, *Implications, Options, and the Road Ahead in Arizona* breaks down implications of an ACA repeal for a variety of stakeholders by provision. It also sheds light on what other state legislatures have done or are currently undertaking to preserve ACA protections in the event the federal law is overturned.

The legacy of the ACA and health care in the U.S. is still being written. This is a snapshot report of the law's impact to date and potential future and is primarily intended for a wide Arizona audience. Though the ACA is not without its challenges, in the absence of a comparable state or federal alternative in the event of repeal, it *is imperative that we not let the perfect be the enemy of the good.* COVID-19 serves as a powerful reminder that we should build upon systemic imperfections, for the ACA is the only safety net we have left and provides essential care to those who otherwise would be unable to obtain care. When the dust finally settles on COVID-19 and the ink from the *California v. Texas* decision is still wet, we can only hope that hindsight is truly 2020.

The ACA is an extensive piece of legislation that spans over 900 pages and includes many provisions, categorized under ten titles. Its provisions are centered around three main pillars: access, affordability, and quality.

Access

The ACA has been instrumental in helping Arizonans access health care. It gave states the option to expand Medicaid program eligibility to cover adults with incomes below 138 percent of the Federal Poverty Level (FPL). It also provided consumers with subsidies, or premium tax credits, to purchase private health insurance through a Health Insurance Marketplace and allowed young adults to remain on their parent's health plan until the age of 26. As a result, the number of uninsured Americans dropped from more than 46.5 million in 2010 to 26.7 million in 2016—the lowest rate recorded in our nation's history. In Arizona, the uninsured rate was 18.0 percent in 2008 and reached a record low of 10.0 percent in 2016 both of which are higher than the national average. However, some of these gains have since been erased as the number of uninsured increased to 27.9 million nationally and the rate of uninsured increased to 10.6 percent in Arizona in 2018. The reversal of this downward trend has been influenced by various policy changes adopted by the Trump administration including the Tax Cuts and Jobs Act, unprecedented revisions to the "Public Charge" Rule, and reduced funding for Marketplace enrollment outreach, among others.

Affordability

In addition to improving access to care, the ACA has also slowed the growth of national health care expenditures but progress is still needed to reduce the cost of medical care in the U.S. Just one month following the law's passage in 2010, the Office of the Actuary of the Department of Health and Human Services projected its financial impact through the year 2017. Their report estimated that annual national health expenditures would surpass $4.1 trillion in 2017, representing 20.2 percent of the gross domestic product (GDP). Yet, in 2018, actual expenditures reached $3.6 trillion and constituted 17.7 percent of the GDP. Cumulatively, this reflects a reduction in expected health care spending of roughly $2.5 trillion since 2010.

Quality

The quality of health care has also improved under the ACA. Most health plans are now required to cover essential health benefits like preventive services. As a result, hospital-acquired infections and readmission rates have fallen. There have also been statistically significant reductions in cardiovascular-related mortality and mortality from end-stage renal disease as a direct result of Medicaid Expansion. However, though the ACA seeks to manage quality, the U.S. lags in global quality measures in areas such as infant mortality, maternal mortality, and overall life expectancy. This ultimately illustrates how the U.S. must do more.

This report is framed around **five** key aspects of the ACA, heretofore referred to as "provisions":

1. Medicaid Expansion
2. Protections for Pre-Existing Conditions
3. Ten Essential Health Benefits
4. Health Insurance Marketplaces
5. Dependent Coverage Until 26

Key Provisions of the Affordable Care Act

Medicaid Expansion

Provision Description	Impact
Expanded eligibility requirements for Medicaid from 100 percent of the Federal Poverty Level (FPL) to 138 percent FPL. This increased the number of children and families who were eligible for Medicaid coverage. To date, 38 states (including Arizona) have expanded Medicaid eligibility.	Implications include: • Increasing access to care • Improving financial security of low-income families • Improving health outcomes • Reducing uncompensated care • Promoting economic mobility • Safety-net for unintended consequences *National:* The uninsured rate among the nonelderly population in the United States dropped from 17.1 percent in 2008 to 10.4 percent in 2018. *Arizona:* The uninsured rate in Arizona dropped from 18.0 percent in 2008 to a record low of 10.0 percent in 2016 with rates rising in 2018 to 10.6 percent.

Why Was This Provision Necessary?

The ACA was signed into law in 2010 following a significant economic recession in the U.S. which left many jobless, uninsured or underinsured. Access to high-quality and affordable health care varies greatly across the country, partially due to significant disparities in insurance coverage. Lack of insurance has been shown to contribute to poor health outcomes and health disparities. The uninsured are less likely to access preventive health care and are more likely to delay care which may result in more costly and serious health conditions. Research indicates that gaining insurance coverage improves access to health care while reducing the adverse effects of being uninsured. The Medicaid Expansion provision of the ACA aimed to reduce the uninsured rate among low-income Americans by expanding eligibility due to the significant number of uninsured in the country.

Before the Affordable Care Act, 44.2 million nonelderly Americans were uninsured (17.1 percent) leading to high health care costs and notable health disparities. In Arizona, the uninsured rate was even higher (18.0 percent in 2008). Nearly 31 percent of Arizonans are low-income (<200 percent FPL) and 22 percent of Arizonans are now covered under Medicaid or CHIP, illustrating the critical nature of this provision.

While gaps in insurance coverage impact individuals of all ages, races, and ethnicities, low-income individuals and communities of color tend to be overrepresented in the ranks of the uninsured. Additionally, before the ACA, Medicaid eligibility was limited to certain low-income groups like children,

pregnant women, the elderly, people with disabilities, and some parents. Before the ACA, low-income adults had few options for affordable insurance coverage and as a result experienced worse health outcomes. childless adults living below the poverty line were granted Medicaid coverage through AZ Prop 204. The option to extend eligibility for Medicaid to those earning >138% of the federal poverty level was provided by the ACA, and those who did not qualify for Medicaid gained new options through the ACA Marketplace.

About Medicaid Expansion

Medicaid Expansion is among the most influential and well-known provisions of the ACA as it has provided coverage to millions of low-income Americans and the working poor. In many cases, eligibility for Medicaid is determined by income as a percentage of the Federal Poverty Level (FPL). The ACA allowed states to expand eligibility for their Medicaid programs to cover childless adults whose income was up to 138 percent of the FPL, as opposed to the previous 100 percent cap. The federal government paid 100 percent of the costs for these enrollees from 2014-2016. However, the law has incrementally reduced the federal share of these costs to 90 percent in 2020, where it will remain each year thereafter.

The number of individuals, predominantly children and working families, who are eligible for Medicaid coverage increased dramatically through Medicaid Expansion. The potential repeal of the ACA would be particularly devastating to children as they consistently represent nearly half of all Medicaid enrollees. However, its impacts extend beyond insurance coverage and include increased access to care, increased financial security for low-income families, improved health outcomes, reduced uncompensated care, and enhanced economic mobility.

As originally drafted, the ACA required all states to implement the Medicaid Expansion provisions. However, despite the sweeping implications of this provision, the Supreme Court in *NFIB v. Sebelius* ruled that the federal government could not mandate states to adopt wider eligibility standards making adoption of this provision optional for states. In its original inception, the federal government provided 100 percent of the funds to this newly eligible population with incrementally reduced federal share over time. The amount of federal funding for Medicaid, in general, is contingent upon the population of the state and their needs. Allowing states to decide whether to expand has led to a lack of uniformity across the country and widened health disparity gaps between expansion and non-expansion states. To date, 13 states have not yet expanded Medicaid.

Protections for Pre-Existing Conditions

Provision Description	Impact
Prohibited insurers from using an individual's pre-existing condition(s) as grounds to: • Deny coverage • Set individual and small group rates • Exclude coverage of pre-existing condition • Cancel a policy A pre-existing condition is a term used by insurance companies to qualify a health condition that existed prior to enrollment in an insurance policy. Some common pre-existing conditions include chronic illnesses, cancer, and pregnancy.	Implications include: • Access to coverage for individuals with pre-existing conditions • Reduction in out-of-pocket costs • Improved health outcomes *National:* 54 million people have a pre-existing condition that would have otherwise been deniable in the pre-ACA individual market. *Arizona:* Approximately 2.8 million non-elderly Arizonans have a pre-existing health condition.

Why Was This Provision Necessary?

Before ACA protections took effect in 2014, private insurers in the individual market could utilize an applicants' health status, history, and other risk factors to determine whether and under what terms to issue coverage. A "pre-existing condition" is the term used by insurance companies to refer to a heath condition that existed prior to the start of the insurance policy. Insurers used multiple practices to discriminate against applicants with pre-existing conditions, including underwriting practices that allowed them to deny coverage altogether or charge significantly higher premiums depending on an applicant's pre-existing conditions.

Some of the pre-existing conditions that could lead to automatic denials of coverage include cancer, diabetes, epilepsy, heart disease, and pregnancy. It is estimated that 54 million people or 27 percent of the nonelderly population have a pre-existing condition that would have been deniable before the ACA.

These practices led to significant market segmentation as people with pre-existing conditions, who typically have the highest-cost health conditions, were left without health insurance coverage or were underinsured. Pre-existing conditions were used as a way to justify higher rates since insurance companies argued that they were at higher risk. Thus, a "pool" was created of high financial risk patients who had much greater difficulty obtaining comprehensive and affordable coverage leading to large coverage gaps.

About Protections for Pre-Existing Conditions

The ACA prohibited insurers from using an individual's pre-existing conditions or health status to deny coverage, prohibited insurers from using prior health claims data or health status to set individual and small group market rates, and disallowed insurers from canceling a policy or excluding coverage for pre-existing conditions. As a result, this is one of the most popular and consequential provisions of the ACA. Added as part of the "three-legged stool" of the ACA, these protections were intended to create more access for individuals with pre-existing conditions, improve affordability, and reduce inequities. One notable exception to this provision is a "grandfathered plan" which refers to a policy that was purchased on or before March 23, 2010 and has not been changed in certain ways that would reduce benefits or increase costs to consumers.

Protection for people with pre-existing conditions in the ACA has transformed our national narrative on what it is *fair* to be charged based on previous or current health conditions. As a result, consumers and voters have spoken-out nationally and in Arizona regarding their unwillingness to support health reforms that do not provide pre-existing condition protections. This has translated into an important societal shift, with bipartisan support for these protections. Both major political parties generally recognize the importance of preserving these protections, despite disagreeing on how to accomplish that goal.

Ten Essential Health Benefits

Provision Description	Impact
Required all ACA compliant health plans to offer coverage for the following Ten Essential Health Benefits: 1. Ambulatory patient services 2. Hospitalization 3. Emergency services 4. Maternity care 5. Mental health and substance abuse treatment 6. Prescription drugs 7. Laboratory services 8. Preventive and wellness services 9. Habilitative and rehabilitative services 10. Pediatric dental and vision services	Implications include: • Access to comprehensive coverage • Affordability of preventative care • Less out-of-pocket expenses for key services • Improved health outcomes *National:* Prior to the ACA, 75 percent of group health plans did not include maternity coverage, 45 percent did not cover substance abuse disorder care, and 38 percent did not cover mental health care. *Arizona:* Prior to the ACA, only 1.7 percent of individual market plans covered maternity health care. Additionally, plans were not required to cover mental health care or substance abuse disorder treatment.

Why Was This Provision Necessary?

In addition to the high rates of uninsured individuals, millions of Americans were also *under*insured prior to the ACA. Someone is considered "underinsured" if their out-of-pocket health care costs exceed five to ten percent of their income, which can result in delaying or forgoing necessary care. Though the rate of underinsured Americans has continued to rise since the implementation of the ACA, those enrolled in ACA-compliant plans are guaranteed coverage for comprehensive health services.

Prior to implementation of the ACA, each state determined its own set of mandated benefits in addition to some basic federal requirements. This resulted in widespread variation in cost, coverage, and access, and left millions of patients with significant limitations to their health benefits. These coverage gaps ranged from maternity care, mental health, and prescription drugs and impacted millions of Americans. More than three in five individuals lacked maternity coverage, one in three lacked coverage for substance abuse treatment, nearly one in five lacked mental health coverage, and one in ten lacked coverage for prescription drugs. These disparities were significant and contributed to poor population health outcomes.

About the Ten Essential Health Benefits

This provision developed a federal benefits standard for individual and small group markets. This standard ensured that insurers cover Ten Essential Health Benefits as outlined by the law, including: ambulatory patient services, hospitalization, emergency services, maternity care, mental health, substance abuse treatment, prescription drugs, laboratory services, preventive and wellness services, habilitative and rehabilitative services, and pediatric dental and vision services. This standard ensured that individuals had access to certain essential health care services which would increase access and affordability of vital care like preventive health care that were previously out of reach for many.

Health Insurance Marketplace

Provision Description	Impact
Established Health Insurance Marketplaces (Marketplaces) in each state to facilitate access for those who otherwise could not gain a plan through their employer or a public program. Some states opted to create their own state exchange while others, like Arizona, opted to use the federal exchange.	Implications include: • Expanded access to coverage for uninsured individuals • Improved health outcomes • Ability to compare health plans • Transparency about plan benefits *National:* 10.6 million Americans have gained coverage through the Marketplace as of 2019, and two-thirds of enrollees will have a choice of three or more insurers in 2020. *Arizona:* More than 153,000 Arizonans enrolled in a plan through federal health insurance Marketplace during 2020 open enrollment, a 25 percent reduction since 2015. To date, there are 5 insurers available on the Marketplace.

Why Was This Provision Necessary?

Before Marketplaces, there was little opportunity for consumers to access transparent information about health insurance or to compare plans, costs, and benefits. By requiring insurers to cover the Ten Essential Health Benefits, the drafters of the ACA sought to standardize health insurance products and to provide a platform for insurers to compete. Beyond the Ten Essential Health Benefits, insurers were also required to adhere to the pre-existing conditions provision further protecting consumers. The Marketplaces created a platform for insurers to compete for consumers thereby providing consumers with choices in finding a plan that meets their needs while guaranteeing that all plans provide basic comprehensive coverage at an affordable rate. Premium tax credits further solidified the Marketplace as a source of coverage for individuals who were ineligible for other programs based on income or other factors.

About Health Insurance Marketplaces

The ACA established Health Insurance Marketplaces—also known as "ACA marketplaces"—in each state as a cornerstone of its health coverage expansion and insurance market reforms. ACA marketplaces are

designed to serve as portals where individuals can compare and purchase private health plans that are compliant with federal and state standards. They also allow income-eligible individuals to enroll in public health care programs, such as Medicaid and the Children's Health Insurance Program (CHIP). Individuals are also able to access financial assistance to purchase private coverage. States have the option to administer their own Marketplace or can utilize the federal Marketplace. Since the ACA was enacted, 16 states and Washington D.C. have developed state-run health insurance exchanges, seven have opted for federal-state partnerships, and 27 states, including Arizona, opted for the federal exchange.

Dependent Coverage to 26

Provision Description	Impact
Required all non-grandfathered private group and non-group health plans to extend dependent coverage for adult children up to the age of 26 and granted coverage parity through Medicaid for former foster youth.	Implications include: • Expanded coverage for a largely uninsured or underinsured population • Balancing of insurance risk pools *National:* 2.3 million young adults gained coverage as a result of this provision. *Arizona:* 50,000 young adults and over 3,300 former foster youth gained coverage.

Why Was This Provision Necessary?

Before the passage of the ACA, many insurance companies dis-enrolled young adults from their parents' health plans because of their age and/or the fact that the young adult no longer met the IRS definition of a dependent. This generally coincided with when the young adult was no longer a full-time student, leaving many high school and college graduates and other young adults with no health insurance. However, young adults' health and finances were at risk. One in six young adults has a serious health problem like cancer, diabetes, or asthma, and prior to the ACA, almost half of uninsured young adults reported having difficulty paying their medical bills. This meant that instead of using preventive health care services to manage serious health problems, young adults would not seek care until it was an emergency which ultimately costs the health care system even more. Pre-ACA, young adults had the highest rate of uninsured of any age group. About 30 percent of young adults were uninsured—a rate that was higher than any other age group. Young adults also have the lowest rate of access to employer-based insurance. Access to parental health insurance has helped to bridge this gap.

About Dependent Coverage to 26

The Dependent Coverage to 26 provision of the ACA allowed adult children to remain on their parents' plans until 26 years of age. Not only did this bolster coverage rates for young adults, it provided support to the insurance industry by balancing insurance risk pools. Young adults tend to be healthier than those in older age groups. Insurance companies benefit from a mix of healthy, relatively low-cost individuals to

balance the older and/or higher cost individuals they cover. Prior to the ACA, insurers could charge older adults up to five times higher premiums. The ACA limited the allowable variation for age-based premiums to three to one. Since insurers were no longer able to charge higher premiums to older adults, enrolling an adequate number of low-risk young adults became critical to maintaining a premium surplus and balancing risk pools to offset costs incurred by higher health care utilizers.

To provide parity for this provision, former foster youth were given the opportunity to remain on Medicaid, regardless of income, until age 26. Prior to the ACA, Arizona provided coverage for former foster youth through the Young Adult Transitional Insurance program until age 21. Former foster youth are a particularly vulnerable population as they are less likely to access preventive health care and are more likely to experience both physical and behavioral health issues. This provision provided much needed extended coverage for over 3,300 former foster youth in the state and many more nationwide.

"Repeal and Replace"

The *Texas v. U.S.* court case, which became *California v. Texas* as it progressed through the courts, is not the first attempt to dismantle the ACA. Since its inception in 2010, opponents have fought to strike down the landmark law through various court cases and legislation. As demonstrated in the timeline, "A Brief History of Watershed Moments for the ACA and Ongoing Litigation", the constitutionality of the ACA has been appealed to the U.S. Supreme Court several times in its ten-year history. The Supreme Court has established the constitutionality of the majority of the ACA's provisions, as well as the concept of severability.

Despite the objective "wins" in the judiciary, the ACA has suffered losses and experienced notable dismantling through legislative and executive efforts.

2017: Efforts to Repeal and Replace

President Trump's victory over Hillary Clinton in the 2016 presidential election was accompanied by a fierce campaign to repeal the ACA, a signature crusade of Republicans for years immediately following its implementation. The first day of the President's administration saw an Executive Order issued to "minimize the unwarranted economic and regulatory burdens" of the ACA, and instructed agencies to "exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden." A few weeks later, Republicans in the U.S. House of Representatives introduced a repeal-and-replace bill: the American Health Care Act (AHCA). Efforts to advance the bill proved difficult, compounded by an analysis from the Congressional Budget Office (CBO) estimating that 24 million people would lose insurance by 2026 under the AHCA. It went on

A BRIEF HISTORY OF
WATERSHED MOMENTS FOR THE ACA AND ONGOING LITIGATION

MARCH 2010
President Obama signs the ACA into law.

JUNE 2012
NFIB v. Sebelius
The U.S. Supreme Court upholds the major provisions of the ACA. Ruling holds that Medicaid Expansion should be the choice of individual states.

JUNE 2015
King v. Burwell
The U.S. Supreme Court rules that subsidies could be distributed through Healthcare.gov, the Federal Exchange, if a state does not set up its own exchange.

DECEMBER 2017
The Tax Cuts and Jobs Act eliminates the tax penalty of the Individual Mandate.

FEBRUARY 2018
Texas v. U.S.
20 states, led by Texas and including Arizona, file a lawsuit in February 2018, seeking to determine the constitutionality of the ACA.

DECEMBER 2019
Texas v. U.S.
The 5th Circuit Court of Appeals issues a 2:1 decision finding the Individual Mandate unconstitutional and remanding the case to the lower court for additional analysis regarding the ACA's constitutionality.

FALL 2020
California v. Texas
(formerly *Texas v. U.S.*)
The U.S. Supreme Court set to hear the case which will determine the constitutionality of the ACA. Arizona's Attorney General is one of 20 state attorney generals who are plaintiffs in this case.

to narrowly pass through the House but was without sufficient votes in the Senate. Senate leadership proposed their own bill in June: The Better Care Reconciliation Act (BCRA). The subsequent CBO analysis projected 22 million uninsured by 2026. On June 28, Arizona Senator John McCain would dramatically cast the deciding vote to defeat the bill. No other major repeal and replace legislative efforts have gained traction in the U.S. Congress since 2017.

The individual mandate portion of the ACA required individuals to have insurance of pay a tax penalty. However, SEC. 11081 of the 2017 Tax Cuts and Jobs Act resulted in the "elimination of shared responsibility payment for individuals failing to maintain minimum essential coverage." The absence of a penalty for not having insurance, and specifically if the ACA would remain functional and constitutional if the tax penalty was severed from the larger law, formed the basis of the 2018 *Texas v. Azar* lawsuit described in the following section.

2018-Present: Ongoing Legal Challenges

Efforts to dismantle the ACA did not stop with Senator McCain's decisive thumbs-down in 2017. In February 2018, a group of 20 states, represented by 18 Republic attorneys general (including Arizona's Attorney General Mark Brnovich) and two Republican governors, sued the federal government by challenging the legality of the individual mandate. A federal judge in Texas ruled in favor of the plaintiffs on December 14, 2018, which would be appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit would go on to issue their two to one decision in December 2019, finding the Individual Mandate unconstitutional. The case name is now *California v. Texas* since in appellate proceedings, the plaintiff is whoever lost in the trial court and is appealing to the higher court. In this case, California is the appellant and Texas is the respondent. The U.S. Supreme Court has since granted California's *cert* petition, asking the court to review three legal questions:

1. Whether Texas and the individual plaintiffs have standing;
2. Whether the 2017 Tax Cuts and Jobs Act (TCJA) rendered the individual mandate unconstitutional; and
3. Whether the remainder of the ACA can survive if the mandate is unconstitutional.

California v. Texas is expected to be argued before the U.S. Supreme Court sometime in October 2020. Opening briefs have now been filed by both parties—California (on behalf of 21 states) and the U.S. House of Representatives filed theirs on May 6, and the Trump Administration submitted a joint brief with other plaintiffs on June 25. U.S. Attorney General William Barr and Health and Human Services Secretary Alex Azar were pushing the White House to withdraw or silence their support of the lawsuit amidst the current health crises. Despite these requests, the White House maintains its position that the entire law should be deemed invalid.

Notably, amidst the COVID-19 pandemic, the U.S. House of Representatives passed the first bill expanding upon the ACA in June 2020. The bill would specifically expand subsidies and eligibility for Medicaid Expansion. This is a stark juxtaposition to the Trump Administration's continued efforts to repeal the landmark federal legislation as illustrated in *California v. Texas*.

California v. Texas Amicus Briefs

A substantial number of amicus briefs were filed in support of the ACA in the *California v. Texas* case. Amicus briefs are legal documents filed in appellate court cases by non-litigants, or those who are not a party to a case, who assists the court by offering information, expertise, or insight that has a bearing on the issues in the case. By May 13, a total of 38 briefs had been filed by every major health care stakeholder:

- Insurers, including America's Health Insurance Plans, the Blue Cross Blue Shield Association, and the Alliance of Community Health Plans
- Provider Organizations, such as the American Hospital Association, the American Medical Association, the Catholic Health Association, and 36 state hospital associations (including the Arizona Hospital and Healthcare Association)
- Patient and Consumer Advocates, including the AARP, Public Citizen, Families USA, the American Cancer Society, and the National Health Law Program
- Children's Health Advocates
- Disability Rights Advocates
- Public health experts and organizations, including more than 200 deans, department chairs, and faculty members, the American Public Health Association, and the American Academy of Nursing
- Federally recognized tribal nations, national tribal organizations, and local/regional tribal organizations

Collectively, these amicus briefs underscore the dire implications of invalidating the ACA—significant coverage losses, disruption of health care, and destabilization of both health and economic markets. Especially against the backdrop of the ongoing COVID-19 crisis, the importance of the ACA to major stakeholders cannot be understated.

The next section of this report narrows the lens of the ACA to its implementation in the state of Arizona. This snapshot review serves to contextualize implications of repeal discussed in the second part of this report.

The Affordable Care Act in Arizona

Arizonans experience a variety of unique disparities in health status, health coverage, and access to health care. These disparities are particularly pronounced among low-income persons and those who identify as American Indian and Latinx. The table below provides a snapshot of Arizona's population and health disparities highlighting the unique need for the ACA in Arizona.

At A Glance: Arizona's Population and Health Disparities

Demographic Snapshot	Health Disparities in Arizona

• Nearly 7.3 million people live in Arizona
  ○ 54.1 percent White, non-Hispanic or Latinx
  ○ 5.1 percent Black/African American
  ○ 5.3 percent American Indian/Alaska Native
  ○ 3.7 percent Asian
  ○ 31.6 percent Latinx
• Arizona will become a majority-minority state by 2030, meaning the numbers of residents identifying as a racial minority will surpass the number of individuals identifying as White.
• Arizona is home to 22 federally recognized tribes.
• 352,770 Arizona residents live in rural parts of the state.
	• Arizona has the 13th highest rate of poverty and the 10th highest proportion of uninsured individuals in the country.
	• American Indians/Alaska Natives and Latinx Arizona residents experience lower than average rates of health insurance coverage and disproportionately higher rates of chronic health conditions and poverty.
	• One in seven Arizonans live in poverty.
	• 10.6 percent of Arizonans are uninsured, compared to 8.9 percent nationwide.
	• Arizona has ranked 49th for its rate of uninsured children for 5 consecutive years.
	• In 2010, 18 percent of adults in Arizona delayed or forwent medical care compared to 4.7 percent of adults nationally.

Both nationally and for these populations in Arizona, it is critical to address health disparities before needs outpace available resources. The ACA targets the root of these inequities by *expanding insurance coverage*, *increasing access*, and *improving affordability* of health care, especially for vulnerable populations. The following section highlights both the history and the impact of key provisions on the lives of Arizonans.

A Tumultuous Path for the ACA in Arizona

National Federation of Independent Business v. Sebelius was ultimately brought before the U.S. Supreme Court in 2012, at which time it was determined that the federal government could not mandate states to expand their Medicaid eligibility. However, only two years later, Arizona Governor Jan Brewer called to expand Medicaid in her State of the State address; after a contentious legislative battle, Arizona became the 24th state to pass Medicaid Expansion in 2014. Though Governor Brewer had previously been a staunch opponent of the Affordable Care Act, the financial incentives brought by the ACA and the burden of uncompensated care in Arizona led her to become a leading force in its passage in Arizona.

Passage of Medicaid Expansion in Arizona was largely predicated on the increased Federal Medical Assistance Percentage (FMAP) and the creation of a hospital assessment to pay the state's share of expansion costs. Before the ACA, the federal government contributed two or more dollars for every dollar spent by the state to administer their Medicaid programs. The ACA required the federal government to initially fully fund states' costs associated with expanding Medicaid eligibility providing a significant incentive to expand. Arizona's creation of the Hospital Assessment Fund, which was designed to supplement the state's expansion costs and provide coverage to childless adults, was also a significant contributor to the state's choice to expand Medicaid eligibility. This provider assessment model allows hospitals or providers to make payments to the state, triggering federal matching funds as determined by the FMAP rate. At this point, costs are returned to providers through Medicaid reimbursements.

In Arizona, the number of those eligible for Medicaid has grown significantly since the adoption of Medicaid Expansion in 2014. Since 2017, Arizona's Medicaid program, the Arizona Health Care Cost Containment System (AHCCCS), has seen a net gain of 426,000 members as a direct result of the ACA. Approximately 82,000 of these members were adults, 73,000 were children, 249,000 were childless adults, and 21,000 were children covered under the Children's Health Insurance Program (CHIP).

The Children's Health Insurance Program: Filling in the Gaps

CHIP provides coverage to low-income children whose families earn too much to qualify for Medicaid but tend to struggle to afford health insurance on the private market. For children of low-income and working families in Arizona, the Medicaid Expansion provision of the ACA served a unique role between 2010 and 2016. In 2010, Arizona froze its state CHIP program, KidsCare, in response to state budget constraints during the Great Recession. This was especially concerning as Arizona had the second highest rate of uninsured children in the country. Until KidsCare enrollment was reinstated in 2016 which was made possible in part by the increased FMAP, Medicaid served as a critical stop gap for Arizona children that no longer qualified for KidsCare coverage but who met the new Medicaid Expansion income qualifications. In fact, 23,000 children, or 60 percent of KidsCare enrollees, transitioned to Medicaid as a direct result of the Medicaid Expansion provision. Though not an intention of the ACA or Medicaid Expansion, this provision filled a critical coverage gap in Arizona for many former KidsCare beneficiaries that became newly eligible due to increased eligibility caps. This is similar to the unintended yet critical role that the ACA has played in filling coverage gaps created by the COVID-related economic downturn.

Legal Action in Arizona

Similar to the legal challenges to Medicaid Expansion that took place at the federal level, there were also challenges to expansion in Arizona. Members of the Arizona Legislature under the guise of the anonymous entity called "Taxpayer Jenny" sued Governor Brewer and the Director of AHCCCS under *Biggs v. Brewer, 2014*. The petitioners argued that the "hospital assessment" used to assist in Medicaid Expansion could be read as a tax and therefore was subject to Article 9, Section 22 of the Arizona Constitution which requires a two-thirds, supermajority vote.

The case was eventually appealed to the Arizona Supreme Court in 2017 under *Biggs v. Betlach*. It was ultimately decided that the "hospital assessment" was not a tax since it only required a narrow group to pay a fee, and that fee was not part of a general funding source to be used by the state, and instead served a very specific purpose that *benefits* hospitals.

The decision rendered in *Biggs* is critical to understand how the challenges to Medicaid Expansion on grounds of constitutionality have been rather unsuccessful. Despite Arizona's mixed political support for

the AHCCCS program, Medicaid expansion and the hospital assessment that funds it were deemed acceptable under the Arizona Constitution. Further, the Court argued that "the assessments enable hospitals to be compensated for treating patients who are unable to pay," thus directly benefitting hospitals who would previously be forced to utilize uncompensated care funds. Though the ACA has certainly faced opposition in Arizona, its impact on the state's most vulnerable populations cannot be understated, and repeal poses a significant threat to public health.

Conclusion

Despite a historically positive trajectory, we are now experiencing a reversal of former gains largely due to dismantling of the ACA. Nationally, 1.9 million more Americans were uninsured in 2018 compared to 2017. Notably, Arizona was one of the eight states across the country with a statistically significant increase in the number of uninsured leaving approximately one in ten Arizonans uninsured. This is a concerning trajectory specifically for a state with significant health disparities and few affordable and comprehensive coverage options.

The ACA is a touchstone piece of legislation that has dramatically shaped the delivery of health care in the U.S. With the U.S. Supreme Court set to hear *California v. Texas* oral arguments just a few months from now, it is imperative that stakeholders and decisionmakers acknowledge the objective gains of the ACA and potential losses given a complete or partial repeal.

The second part of this report, *Implications, Options, and the Road Ahead in Arizona*, breaks down implications of an ACA repeal for a variety of stakeholders. It also sheds light on what other state legislatures have done or are currently doing to preserve ACA protections in the event it is overturned.

Implications, Options, and the Road Ahead in Arizona

Part Two

Introduction

As demonstrated in Part One, the ACA has brought significant benefits both nationally and in Arizona. The five key provisions highlighted in this report have been fundamental in improving access, affordability, and quality of health services and have unique implications on a wide range of stakeholders, including hospital systems, insurers, health providers, and patients. However, with the threat of a full or partial repeal of the ACA, these stakeholders will suffer economic and health-related consequences. This portion of the report highlights the uncertain future of the ACA, the potential implications of repeal on Arizonans and key stakeholders, and examples of state-level protections that can be enacted to preserve the provisions of the ACA should it be repealed.

COVID-19

The outbreak of a novel coronavirus, SARS-CoV-2, has emerged as the foremost public health crisis of our time and served as a stress test for the U.S. health care system. Unprecedented in the speed and severity with which it has impacted all aspects of life in the U.S., COVID-19 has taken the lives of more than 130,000 Americans at the time of this writing. The enormous burden that the pandemic has placed upon the health care system cannot be understated, and we likely will not fully appreciate its impact for years to come.

COVID-19 has masterfully exposed the dangerous implications of ill-prepared public health and medical care systems. The U.S. economy lost more than 20.5 million jobs in April 2020, making the ACA a critical, and sometimes the only, safety-net for the millions of Americans expected to enroll in Medicaid or seek subsidies through the ACA Marketplace.

The staggering numbers of individuals impacted by COVID-19-related job losses highlight the unexpected but critical role that the ACA plays in providing coverage to our country's vulnerable populations. An estimated 78.5 million individuals live in a family in which someone has become unemployed and in some cases, their health insurance. This is significant as 61 percent of these individuals, or 47.5 million people, were previously covered under employer-sponsored insurance either as a primary beneficiary or dependent and are at risk of losing coverage. As of early May 2020, an estimated 27 million additional individuals are forecasted to lose their employer-sponsored insurance and become newly uninsured. As the economic ramifications of the COVID-19 pandemic unfold, this number will likely continue to grow.

The ACA has the potential to protect these newly uninsured individuals through either Medicaid Expansion or the subsidized Marketplace plans. The Kaiser Family Foundation estimates that nearly half of those who are left uninsured as a result of a job loss, will be eligible under Medicaid expansion. Further, an estimated 8.4 million individuals who do not qualify for Medicaid but have lost their employer-sponsored insurance will now be eligible for subsidies under the ACA marketplace. In total, 79 percent of individuals who have recently lost employer-sponsored insurance will now qualify for some form of publicly-subsidized health insurance made available by the ACA. Despite the essential role that the ACA is playing during the COVID-19 pandemic, both the plaintiffs of *California v. Texas* and the current Administration are still advocating for the overturn of the ACA.

As discussed earlier in this report, *access, affordability,* and *quality* were the foundational pillars upon which the Obama Administration aimed to improve the experience of health and health care in the U.S., especially for the most vulnerable among us. The architects of the ACA may not have envisioned their bill as a critical force to combat a cataclysmic event as COVID-19; however, this unprecedented public health crisis illustrates how vital the ACA can be in providing essential health care to Americans.

Implications for Key Stakeholders

Patients/Communities in Arizona

Snapshot: Population	Snapshot: Children
• 97,837 adults and 63,762 children are covered under the Medicaid Expansion population. • 14 percent of Arizonans live in poverty. • 11 percent Arizonans are uninsured. • Arizona is estimated to become a majority-minority state by 2030. • Unemployment disproportionately impacts communities of color in Arizona. • The poverty rate in rural Arizona is 27 percent, compared with 13 percent in urban areas of the state.	• 25 percent of Arizonan children are in low-income working families. • 20 percent of Arizona children live in poverty. • 8 percent of AZ children lack health insurance compared to 13 percent in 2009. • 57 percent of AZ children are enrolled in private health insurance. • 35 percent of AZ children are enrolled in public insurance only. • 44 percent of children in Arizona identified as Latinx in 2018. • Five percent of children in Arizona identified as AI/AN in 2018.

While the ACA has had an indelible impact on the health insurance and health care system in the U.S., perhaps its more important contributions have been to various patient populations and the communities from which they originate. As the ACA has lowered uninsured rates nationally, these declines have led to important reductions in racial and ethnic health disparities, specifically among African American, Latinx and American Indian populations, as well as increased coverage for very low-income communities. Between 2013-2016, significant gains were experienced by racial and ethnic groups and individuals living below 138 percent of the FPL. Though many of these coverage gains flattened by 2017, improvements in disparities were most pronounced in states that chose to expand their Medicaid programs. Specifically, expansion states saw a reduction in their uninsured rate to just 6.6 percent in 2018, compared to 12.4 percent for non-expansion states. The absolute gap in insurance coverage between people in households with annual incomes below $25,000 and those in households with incomes above $75,000 fell from 31 percent to 17 percent (a relative reduction of 46 percent) in expansion states and from 36 percent to 28 percent in non-expansion states (a 23 percent reduction).

As an expansion state, Arizona has witnessed similar gains. In Arizona, the number of uninsured individuals declined from 1.1 million in 2013 to 681,000 in 2016, a 39.1 percent decrease. To date, 97,837 adults and 63,762 children in Arizona are covered under the Medicaid Expansion population. As a percentage of the population, the portion of uninsured individuals in Arizona fell from 17.1 percent to 10 percent. However, the number of Arizonans without health insurance, similar to national trends, has been increasing since 2017. In 2018, Arizona was one of the states with a statistically significant increase in the number of uninsured in the U.S. This downturn can be largely attributed to incremental efforts to dismantle the ACA, as well as policy changes like those made to Public Charge determination. These changes and the rhetoric surrounding them have largely impacted immigrant populations and mixed-status families, who in Arizona are frequently of Latin American origin. While significant gains have been realized for especially Arizona's low-income, Latinx, and American Indian communities under the ACA, we are currently witnessing the deleterious effects of decreased access to health navigation services, culturally directed outreach,

discussion of Medicaid work requirements and regressive immigration policies result in misinformation, confusion and lack of trust in health systems for vulnerable communities. These policies, as well as highly publicized incidents of racial and ethnic persecution, have contributed to reduced rates of insurance coverage and use of health services.

Considerable gains have also been made for rural communities in Arizona and across the U.S. This is significant as the U.S. is a largely rural country. In fact, 72 percent of the landmass in the U.S. is rural. In Arizona, the majority of acreage is rural yet most of the population lives in urban communities with an estimated 351,316 out of 7,171,646 Arizonans are living in rural Arizona.

The benefits of expansion extend beyond increases in coverage, as access to health services and health outcomes have improved for millions of Americans. Since the passage of the ACA, more low-income adults have a primary care physician and are seeking care for chronic conditions utilizing preventive services. Additionally, there have been fewer premature deaths with an estimated 19,000 lives saved as a direct result of Medicaid expansion. These implications extend past health care and into financial stability and economic mobility, especially important for working families. Research has shown that due to this provision, there have been significant reductions in the share of low-income adults struggling to pay a medical bill and a reduction in the number of evictions. Additionally, individuals have better access to credit and lower-interest mortgages as a result of the ACA.

Children in Arizona

Medicaid Expansion has drastically increased the number of children insured under Medicaid and CHIP. In 2016, Medicaid and CHIP provided coverage for nearly 35.8 million children which has been especially vital to children of color. In 2008, prior to the passage of the ACA, 7 percent of White children, 10 percent of Black children, and 19 percent of Latinx children lacked health insurance coverage. However, in 2015, as a result of the ACA, only 4 percent of both White and Black children and 8 percent of Latinx children lacked coverage. Additionally, studies have shown that children are more likely to have an annual Well-Child exam if their parent is enrolled in Medicaid. Medicaid Expansion has reduced the number of uninsured adults thereby increasing the likelihood that low-income children will receive a Well-Child visit. The increase in children covered under Medicaid and CHIP has significant impacts on health outcomes as research has shown that after enrollment children are more likely to gain a consistent source of health care, regular visits, utilize preventive care, and are less likely to experience unmet health needs.

As a direct result of the Affordable Care Act, uninsured rates for children of color, particularly Latinx children, reached a historic low of 7.7 percent in 2016. However, it is important to note that this gap widened for the first time in a decade in 2018 which has been attributed to the Trump Administration's rhetoric targeting immigrant families and changes to the "Public Charge" Rule. This has particularly significant ramifications for Latinx children as they are twice as likely to be uninsured than non-Latinx children.

Medicaid Expansion is especially important to rural children as they are 24 percent more likely than children in urban communities to utilize Medicaid or CHIP programs. However, it is important to note that rural children, especially those in lower socio-economic groups, often experience a unique set of challenges specific to geographic isolation that are not alleviated by health insurance coverage, such as availability of providers in their area and limitations in transportation.

The ACA has also been critical for former foster youth in Arizona who experience higher rates of chronic health conditions and reduced access to preventive health care. Expanded Medicaid eligibility has provided coverage to more than 3,300 former foster youth in Arizona.

American Indians and Alaska Natives

Arizona is home to 22 federally recognized tribes and over 385,000 self-identified American Indians and Alaskan Natives (AI/ANs). American Indians and Alaska Natives face considerable risk and uncertainty due to a number of special provisions in the ACA intended to address pervasive underfunding and health disparities. The Indian Health Service (IHS) has been underfunded for decades, leaving the AI/AN population has been left with among the worst disparities and access to medical services in the country. . The Indian Health Care Improvement Act (IHCIA) of 1976 provides the legislative authority for the IHS and was permanently reauthorized in 2010 by the ACA.

In Arizona, American Indians and Alaska Natives are disproportionately likely to qualify for Medicaid or CHIP based on income, but disproportionately likely to be uninsured Reauthorization of the IHCIA opened the door for IHS to work with other payers (e.g., Medicare, Medicaid, the Veterans Administration, and private insurance). Between 2013 and 2014, the percentage of uninsured AI/Ans under age 65 decreased from 22.6 percent to 17.8 percent. This decrease is at least partially attributable to expansion of Medicaid and the establishment of Health Insurance Marketplaces under the ACA. Losing the permanent reauthorization of the IHCIA would put an estimated 2.2 million AI/ANs at risk of losing critical preventive services. Diversified funding benefits tribal health facilities and improves access to services for the AI/AN population.

Hospital Systems

Since the implementation of the ACA, many more Americans are insured through Medicaid, the Marketplace, or private insurers. Medicaid expansion and other key provisions of the ACA dramatically reduced the burden of uncompensated care on hospital systems and health care providers. In Arizona, over 97,000 adults and 63,000 children are enrolled under Medicaid Expansion. The state experienced a reduction in uninsured ED visits and an increase in Medicaid ED visits following the implementation of the ACA, which is indicative of increased access to preventive health services. Uncompensated care burdens in expansion states fell from 3.9 percent in 2013 to 2.3 percent of operating costs in 2015. These cost savings are significant, with an estimated savings of 41 cents for every dollar spent on uncompensated care between the years 2013 and 2015. This has led to an estimated cumulative savings of $6.2 billion in all hospitals in Medicaid Expansion states.

A common narrative propagated by opponents of Medicaid Expansion is that hospitals charge private insurers more to compensate for the difference in prices paid by Medicaid in expansion states. The evidence points to the contrary, and studies even find the opposite. When public programs pay hospitals less, commercial insurers also experience a reduction in their payments to hospital systems.

Notably, the Arizona Hospital and Health Care Association which represents hospitals and health care partners across the state was part of the joint amicus brief filing of state hospital association in support of the petitioners.

Insurers

The ACA led to dramatic reductions in the uninsured rate and expanded opportunities for insurers to widen their consumer pool. However, due to the consumer protections under the ACA, insurers were no longer able to utilize practices like discriminating based on pre-existing conditions or utilizing risk-adjustment scales. This ultimately led to a reduction in profits, forcing insurers to increase premiums.

Though profit margins may have decreased, insurers have seen many other benefits as a result of the ACA. Medicaid Expansion has provided significant business opportunities for insurers with a greater number of enrollees eligible for contracted managed care plans. Additionally, expanding Medicaid eligibility has resulted in lower coverage costs and a more stable private market, which is beneficial for payers in the private market. Prior to Medicaid Expansion, uninsured individuals typically had higher costs when they became insured because they delayed treatment, ultimately resulting in higher costs. When uninsured rates are low, both patients and insurers benefit.

Arizona had one of the most robust Marketplaces in the country with eight insurers available and 120,071 enrollees during its first year in 2014. This not only provided enrollees with considerable options but expanded business opportunities to insurers participating in the Marketplace. Though many insurers left the Marketplace in subsequent years, more providers have rejoined the Market; however, Marketplace enrollment has fallen 25 percent from its peak of 205,666 enrollees in 2015.

Insurance provider advocacy groups like America's Health Insurance Plans, the Blue Cross Blue Shield Association, and the Alliance of Community Health Plans filed an amicus brief defending the ACA in response to *California v. Texas.*

Health Care Providers

The ACA has unquestionably affected the work of health professionals in the U.S. Broadly speaking, expanding insurance coverage to millions of Americans enabled providers to take better care of their patients and facilitate improved continuity of care. This is especially true for primary care providers (PCPs). Although the ACA attempted to attract more physicians to primary care, the national supply of PCPs per 100,000 people fell from 46.6 to 41.4 between 2005 and 2015.

ACA policies attempted to realign financial incentives to reward improved patient outcomes rather than volume of services. Examples of this include bundled payments, accountable care organizations, and penalties for the occurrence of hospital-acquired conditions. Progress has been made on these fronts, though there is still much work to be done to align financial incentives with the delivery of high-quality health care services.

Medicaid Expansion has been proven to be financially beneficial to health care providers due to a reduction in uncompensated care and visits. Prior to the ACA, primary care physicians saw an average of eight patients a week at either an uncompensated or discounted rate. Further, with millions more insured, health care providers saw a significant jump in the number of patients needing primary care providers.

With an expanded number of services covered under Medicaid, providers are better able to meet the needs of their patients while being reimbursed for these services. This is especially beneficial for chronically ill

patients who may have otherwise fallen through the cracks due to coverage gaps and individuals who previously lacked access to preventive medicine and may be at risk for developing a chronic condition.

Notably, the American Medical Association (AMA) and other health care organizations filed an amicus brief in support of the ACA in response to *California v. Texas.*

Implications of Repeal for Arizonans by Provision

Medicaid Expansion

Should the Affordable Care Act be repealed, an estimated 20 million individuals nationwide will lose their coverage leading to significant adverse effects and a reversal of many of the benefits brought by the Medicaid Expansion provision. The Center for Budget and Policy Priorities has estimated that if the ACA is repealed, the national uninsurance rate will almost double. Prior to the COVID-19 pandemic, a full repeal of the ACA was estimated to leave 297,000 Arizonans uninsured; this number has since increased to 363,000. The fairly recent recertification of KidsCare, Arizona's CHIP program, puts the program at increased risk for elimination should the ACA be repealed due to Arizona's historic CHIP freezes. Health care for the more than 40,000 Arizona children currently enrolled in KidsCare and the more than 62,000 children who are currently receiving coverage as a direct result of Medicaid Expansion would thus be at risk. This would in turn cause significant harm to patients, hospitals and health care providers, and the economy.

As a direct result of the Medicaid Expansion provision, the uninsured rate in Arizona dropped significantly from 18.0 percent in 2008 to a record low of 10.0 percent. As of 2019, over 63,000 children are covered and 97,000 adults fall within the Medicaid expansion population. Currently, 22 percent of the state's population is insured under Medicaid making a potential repeal devastating to the state's most vulnerable populations. Arizonans have already seen a slight reversal in the gains brought by the ACA as demonstrated by the slight uptick in the uninsured rate in 2018, largely due to the federal dismantling of the law. Prior to the COVID-19 pandemic, a full repeal of the ACA was estimated to leave 297,000 Arizonans uninsured; this number has since increased to 363,000. Reversing Medicaid Expansion would negatively impact health outcomes, financial security, and the burden of uncompensated care across the state.

The hospital assessment that funds Medicaid Expansion is also tied to funding for childless adults earning less than 100% of the Federal Poverty level. Thus, if the ACA were overturned, coverage would also be at risk for the 363,000 very poor adults receiving coverage through Medicaid.

Protections for Pre-Existing Conditions

There are an estimated 2.8 million Arizonans and 54 million individuals nationwide who have pre-existing conditions that would have prevented them from otherwise obtaining or affording comprehensive health coverage prior to the ACA. This has made this provision consistently one of the most popular among the general public both nationally and in Arizona. Nearly 75 percent of Americans considered protections for pre-existing conditions to be "very important" before the COVID-19 pandemic. This wide-scale support has led to various voter-based initiatives to preserve the provision should the ACA be repealed. One such example in Arizona is the "Stop the Surprise Billing and Protect Patients Act" which is poised to be on the 2020 general election ballot. This initiative includes language that would ban insurers from discriminating based on pre-existing conditions and fill gaps in current state law in the event of an ACA repeal.

Notably, in 2020, Arizona Governor Ducey signed legislation that would prevent insurers on the individual market from denying someone coverage due to a pre-existing condition. However, this law fails to protect Arizonans the same way that the ACA does as it lacks cost-control protections and fails to delineate what constitutes "unfair discrimination".

Ten Essential Health Benefits

Comprehensive health insurance coverage is critical in ensuring access to critical health services including preventive medicine and treatment for chronic conditions. Health insurance regulation is generally within the purview of the states which leads to variation across the country concerning the mandated benefits that must be covered by insurance plans sold in each state. This led to a patchwork of requirements across the country. Arizona was a prime example of this variability as it lacked a comprehensive set of mandated benefits for its market plans. Only the state employee plan had a detailed list of mandated benefits. Because of this, thousands of Arizonans were left without coverage for basic health services like maternal health care and comprehensive prescription drug coverage. The ACA addressed this by standardizing a set of foundational health services that most insurers must cover.

The Trump Administration has provided states with increasing latitude to offer alternative insurance options, many of which were previously not allowed under the ACA. These alternative plans, though often less expensive, are not obligated to guarantee coverage for the Ten Essential Health Benefits or other protections guaranteed by the ACA. Examples of these alternative options include Association Health Plans and Short-Term Limited Duration plans. In the 2019 legislative session, the Arizona Legislature passed Senate Bill 1109 authorizing Short Term Limited Health Plans and Senate Bill 1085 authorizing Association Health Plans. Under the new law, non-ACA compliant Short-Term Limited Health Plans can be sold for up to three years as opposed to the previous limit of one year. Similarly, Senate Bill 1085 created a state level regulatory structure making non-ACA compliant Association Health Plans more available in Arizona. A recent report found that Short-Term Limited Duration plans present a threat to both the health and financial well-being of American families due to their bare bones coverage and their practice of systematic discrimination against individuals with pre-existing conditions. Specifically, only half of premium costs were found to spent on health services as compared to ACA-compliant plans that are required to spend at least 80 percent of premium costs on health services. Additionally, these plans often deny coverage for lifesaving or necessary medical treatment. These plans are offered on the Marketplace alongside ACA-compliant plans which may be misleading to consumers who are seeking affordable, comprehensive coverage.

Health Insurance Marketplaces

When Arizona's Insurance Marketplace opened in 2014, the state was nationally recognized for its robust option of eight insurers. Nevertheless, by 2016, most insurers had withdrawn from the state exchange, leaving many counties with only one option and catalyzed a spike in premiums. This tumultuous period was often referenced as an illustrative example of the failures of the ACA marketplaces—and by extension, a failure of the entire law. Nevertheless, Arizona's insurance risk pools would eventually stabilize premium rates, and insurers slowly began to offer plans through the ACA Marketplace once again: Between 2018 and 2020, the number of insurers offering plans in the Arizona Marketplace would grow from two to five. Moreover, almost three-quarters of consumers who receive coverage through marketplace plans also receive subsidies which largely mutes the impact of fluctuating premiums, though premiums still remain high for those in the non-subsidy groups. The resurgence of insurers back into the

Arizona's Marketplace and stabilization of premiums are reflective of remarkable resilience in the Marketplace, as well as a continuous demand among residents for ACA protections and comprehensive health coverage.

Arizona uses the federally facilitated Marketplace, through which more than 153,000 people enrolled in individual market plans during the open enrollment period for 2020 coverage. This figure represents a reduction of more than 25 percent from the Marketplace's peak enrollment in 2015 at 205,000.

Dependent Coverage to 26

Young adults have historically had both the highest uninsured rate of any age group and the lowest rate of access to employer-based health insurance. This holds true in Arizona as well with over 25 percent of Arizonans aged 18-28 reported being uninsured in 2011. Prior to the ACA, young adults were typically disenrolled as dependents at 19. This left many healthy, young adults out of the risk pools that help to balance the costs incurred by high utilizers. Though young adults tend to be healthier and lower utilizers of medical services relative to other age demographics, insurance coverage remains critical for seeking preventive care and affording services in the event of health emergencies.

By the end of 2011, the coverage rate for young adults increased ten percent, with an estimated three million young adults newly insured nationwide and 50,000 newly insured in Arizona. Research has shown that this provision has been effective in reducing the number of out-of-pocket expenses over $1,500 providing much needed financial protections for an age group that experiences high debt burdens and low wages. This provision has proven to be especially important given the high rates of unemployment that tend to disproportionately impact early career adults. This provision has proven to be especially important during amidst the current economic crisis related to the COVID-19 pandemic. Dependent coverage is not only crucial to protect the health and financial security of young adults and former foster youth, but also to balance the health insurance risk pools for the larger population.

Preserving ACA Protections at the State Level

In preparation for the possibility of a full ACA repeal, states may enact laws protecting certain key provisions of the ACA. While the federal legislation is the best modality for achieving the goals of the ACA and ensuring continuity across the country, it is important to address the best practices for state level protections and compare them to the actions taken by Arizona. The ACA is meant to serve as a basic "ground floor" for health policy and consumer protections, while many states have chosen to expand on those regulations to create their individual ceilings. The table below highlights the best practices from other states by each key provision and focuses on the steps (or lack thereof) taken by Arizona to preserve the same basic provisions of the ACA, should the federal law be repealed.

State-Level Protections, by Provision		
Provision	**Best Practices**	**Current Law in Arizona**
Medicaid Expansion	**Massachusetts**: State-subsidized health plans for low-income individuals who fall through coverage gaps. States like California, Vermont, and Colorado have either successfully implemented or attempted similar legislation.	Arizona has not enacted protections beyond the ACA to ensure coverage for the Medicaid Expansion population. Similarly, the existing funding structure for the childless adult population would be decimated if the ACA were repealed, putting coverage for adults without children earning less than 100% FPL in jeopardy.
Protections for Pre-Existing Conditions	To date, 17 states have passed laws ensuring protections for pre-existing conditions should the ACA be overturned.	Arizona does not have a comprehensive law protecting all populations from discrimination based on pre-existing conditions. The Arizona Legislature recently passed a law preventing insurers in the individual market from denying coverage due to a PEC. However, this law does not include the cost-sharing protections afforded under the ACA.
Ten Essential Health Benefits	Under the ACA, states have the option to adopt mandated benefit standards for a variety of markets.	Arizona only has mandated benefits standards for state employee health plans.
Health Insurance Marketplaces	Both Massachusetts and Utah had state-run health insurance marketplaces prior to the passage of the ACA. Currently, 16 states and Washington D.C. have opted for a state-run exchange.	Arizona lacks a state-run health insurance marketplace and currently utilizes the federal exchange.
Dependent Coverage to 26	Prior to the ACA, 37 states implemented legislation extending dependent coverage. Six states have expanded dependent coverage beyond the mandated 26 years of age cap imposed by the ACA.	Arizona does not have any current state laws guaranteeing extended dependent coverage.

Medicaid Expansion

Arizona *did not* have a state solution prior to the passage of the ACA to insure this expansion population, many of whom were either uninsured or underinsured and costly to the state. Since passage, Arizona has not created a competing state option for this population *putting hundreds of thousands at risk.*

Protections for Pre-Existing Conditions

In 2020, Arizona state legislators passed a bill preventing insurers in the individual market from denying coverage due to a pre-existing condition. However, the new law does not include the cost-control protections of the ACA. Proponents of this bill argued that Arizona Revised Statute (ARS) 20-448 sufficiently prohibits insurers from charging higher premiums, emphasizing the highlighted portion of subsection B below:

"A person shall not make or permit any unfair discrimination respecting … between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of disability insurance or in the benefits payable or in any of the terms or conditions of the contract, or in any other manner whatever"

However, this language is vague in its definition of "unfair discrimination" or how to specifically distinguish between individuals "of the same class." The uncertainty in the language leaves much of the interpretation up to the courts.

Arizonans with pre-existing conditions would be particularly *vulnerable* to inflated health care costs, reduced access to care, and heightened health disparities should the comprehensive protection offered by the ACA be overturned.

Ten Essential Health Benefits

States can create benefit standards regarding which services are covered and for whom; however, Arizona has only specified essential health benefit standards for its state employee health plans. This leaves many Arizonans unprotected from restricted coverage should the ACA be repealed. Without guaranteed comprehensive coverage, *thousands* of Arizonans would be vulnerable to restricted access to affordable and holistic health services.

Health Insurance Marketplaces

Though the ACA established the first federal provisions creating Health Insurance Marketplaces, states like Massachusetts and Utah have health insurance exchanges that predate the ACA. In Massachusetts, the *Commonwealth Choice* was created as a commercial insurance exchange for individuals who lack employer-based insurance. This model is a key reason that Massachusetts has been successful in dramatically reducing its uninsured rate. Should the ACA be repealed, this type of state legislation will protect residents who lack employer-based health insurance and fail to qualify for Medicaid. However, Arizona has no such state protection leaving thousands of Arizonans who rely on the federal Health Insurance Marketplace at risk should the ACA be repealed.

Dependent Coverage to 26

States have the capability to enact legislation either extending dependent coverage or preserving the federal baseline. However, there is considerable variation in how states outline eligibility requirements and age caps. Prior to the ACA, 37 states, not including Arizona, had extended the age that young adults can remain on their parents' health insurance plan past 18 years of age.

Six states including Florida, Illinois, New Jersey, New York, Pennsylvania, South Dakota, and Wisconsin, have enacted laws that require or authorize carriers to cover young adults beyond age 26. Arizona is in the minority of states who have not guaranteed extended dependent coverage for young adults beyond what is mandated in the federal law.

Prior to the ACA, former foster youth in Arizona were covered under Medicaid until 21 years of age. Since many former foster youth experience difficulties access health insurance coverage, the Dependent Coverage to 26 provision was critical in providing coverage parity for this vulnerable population.

The absence of state protections not only leaves thousands of young Arizonans and former foster youth at risk of losing comprehensive coverage if the ACA were to be repealed, but also threatens the stability of the larger insurance risk pools; thereby threatening higher premiums for consumers of all age groups.

Conclusion

At the time of this report, fallout from the COVID-19 pandemic continues to devastate our nation's economy and shines a spotlight on the need for coverage options provided by the ACA. Key provisions of the law provide rights and protections that have played an indelible role in reshaping the American health care landscape. Because Arizona lacks comparable state-level guarantees and protections, the federal foundation serves a more critical role than ever. Arizona's dependence on the federal provisions in the law is a reflection of the federal law's resilience, relevance, and enduring necessity.

The ACA is woven into the fabric of our health care system, as well as national and local economies. Efforts to repeal and replace the law are not only shortsighted to the benefits and realities of our current health climate but would result in tremendous harm to the health of Arizona's working families and economic stability.

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APPENDIX: ACA Protection Bills Enacted by States

State	Pre-existing Conditions	Medicaid Expansion	Essential Health Benefits	Dependent Coverage to 26	Health Insurance Marketplace
Alabama	NO	NO	NO	NO	NO
Alaska	NO	NO	NO	NO	NO
Arizona	NO	NO	NO	NO	NO
Arkansas	NO	NO	NO	NO	NO
California	NO	YES	NO	NO	YES
Colorado	NO	YES	YES	YES	YES
Connecticut	NO	NO	YES	YES	YES
Delaware	YES	NO	NO	YES	NO
District of Columbia	NO	NO	NO	NO	YES
Florida	YES	NO	NO	YES*	NO
Georgia	NO	NO	NO	YES	NO
Hawaii	YES	NO	YES	NO	NO
Idaho	NO	NO	NO	YES	YES
Illinois	NO	NO	YES	YES*	NO
Indiana	YES	NO	NO	YES	NO
Iowa	NO	NO	NO	YES	NO
Kansas	NO	NO	NO	NO	NO
Kentucky	NO	NO	NO	YES	YES
Louisiana	YES	NO	NO	YES	NO
Maine	YES	NO	YES	YES	YES*
Maryland	NO	NO	NO	YES	YES
Massachusetts	NO	YES	YES	YES	YES
Michigan	NO	NO	NO	NO	NO
Minnesota	NO	NO	YES	YES	YES
Mississippi	NO	NO	NO	NO	NO
Missouri	NO	NO	NO	YES	NO
Montana	NO	NO	NO	YES	NO
Nebraska	NO	NO	NO	NO	NO
Nevada	YES	YES	YES	YES	YES
New Hampshire	YES	NO	NO	YES	NO

New Jersey	NO	NO	YES	YES*	YES*
New Mexico	YES	NO	YES	YES	YES*
New York	NO	NO	YES	YES*	YES
North Carolina	NO	NO	NO	NO	NO
North Dakota	NO	NO	NO	YES	NO
Ohio	NO	NO	NO	YES	NO
Oklahoma	NO	NO	NO	NO	NO
Oregon	YES	NO	NO	YES	YES*
Pennsylvania	NO	NO	NO	YES*	YES*
Rhode Island	NO	NO	NO	YES	YES
South Carolina	NO	NO	NO	YES	NO
South Dakota	NO	NO	NO	YES*	NO
Tennessee	NO	NO	NO	YES	NO
Texas	NO	NO	NO	YES	NO
Utah	NO	NO	NO	YES	NO
Vermont	YES	YES	NO	NO	YES
Virginia	NO	NO	NO	YES	YES*
Washington	YES	NO	YES	YES	YES
West Virginia	NO	NO	NO	YES	NO
Wisconsin	NO	NO	NO	YES*	NO
Wyoming	NO	NO	NO	YES	NO