

Health Care on the Ballot

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What the Election Means for the Affordable Care Act (ACA)

The Affordable Care Act (ACA) – the signature federal health reform legislation signed into law by President Obama in 2010 – has been the law of the land for nearly 15 years. And yet it remains a political flashpoint and has faced perennial litigation, legislative, and administrative threats. Under the last Trump Administration, we saw a dramatic “[repeal and replace](#)” effort by Republicans in Congress, one that ultimately failed when Republicans could not agree on a replacement for the ACA. The still-fresh memory of that defeat may keep Republicans from taking another run at ACA repeal in its entirety, but depending on the make-up of Congress, there may be opportunities to either expand ACA protections (something [Democrats have said they will do](#)) or defund and retract ACA protections in favor of deregulation and a free market approach (something [Republicans have said they will do](#)). The new president will also have a great deal of discretion to direct administrative agency action on implementation of key ACA provisions, including benefits requirements and non-discrimination protections. Read on for a discussion of key ACA provisions and how they could be impacted by the election in November.

ACA Private Insurance Market Reforms: Will They Be Vigorously Enforced?

The ACA includes a number of reforms that have fundamentally changed the entire private insurance market, especially the individual and small group markets. These provisions, coupled with regulatory actions to implement them, include unprecedented protections for people without access to employer-sponsored coverage, including:

- Essential Health Benefits (EHB) requirements that require individual market and small group plans to cover a set of ten benefits categories.
- Standardized plan requirements for marketplace plans that simplify the consumer plan shopping experience by making key design features the same across a subset of plans, including the out-of-pocket maximum, deductible, and cost sharing allowed at different plan metal levels.
- Limits on the sale of “junk plans” that do not have to comply with ACA protections, including short-term limited duration plans (i.e. plans that do not provide a full year of health insurance).

These are all provisions that the Administration has a great deal of discretion over how to implement. Under the previous Trump Administration, for instance, federal agencies [adopted an approach](#) to insurance regulation that relied heavily on the free market, with regulatory actions that removed protections on EHB, standardized plans, and short-term plans. A recent white paper from the Harris/Walz campaign, on the other hand, outlines a very

[different approach](#) to health care access and affordability. The campaign vows to protect and expand the ACA’s consumer protections, including through supporting enhanced premium tax credits (PTCs, discussed below).

Enhanced Premium Tax Credits (PTCs): Will Congress Extend Them?

As CHLPI described in a [previous Health Care in Motion](#), the enhanced PTCs that have been effect since 2021 are set to expire at the end of 2025. If Congress fails to act and the enhanced PTCs go away, this would mean [significant premium hikes](#) for low-income marketplace enrollees and would leave many consumers without insurance altogether. Democrats in Congress are preparing for a fight to pass legislation making the enhanced PTCs permanent, and Senators Tammy Baldwin (D-WI) and Jeanne Shaheen (D-NH) have introduced [a Senate bill](#) that would do this. On the House side, Representative Lauren Underwood (D-IL) is sponsoring [the same bill](#). Making the enhanced PTCs permanent will undoubtedly face Republican opposition, and the outcome of the election could have major implications for how and whether the new Congress will act.

Preventive Care Protections: Will They Remain?

Under the ACA preventive care mandate, most private insurers are required to cover a broad range of preventive services without cost sharing. Health Care in Motion previously covered the Fifth Circuit’s June 2024 [Braidwood v. Becerra decision](#), which left the door open for a future, broader ruling that could undermine the mandate nationwide. Since then, the federal government has filed a petition [for Supreme Court review](#) of the Fifth Circuit’s decision, which could land this issue before the Supreme Court next year. Looking ahead, the next Administration and Congress will play pivotal roles in shaping the future of preventive services in the U.S.

A new Trump Administration could undermine the preventive services mandate by choosing not to defend the mandate in court, relaxing efforts to enforce the mandate, and/or expanding religious or moral exemptions to coverage, [similar to actions taken during the previous Trump Administration](#). In contrast, a Harris Administration is likely to appoint agency officials who will defend the mandate, recognizing it as a key ACA protection that ensures affordable access to essential health services.

Congress also holds significant power in safeguarding preventive care. If the Supreme Court rules that all or part of the preventive care mandate is unconstitutional, as the plaintiffs have urged in *Braidwood*, Congress may need to act to remediate the constitutional violation, thereby ensuring continued access to preventive care without cost-sharing. Additionally, Congress can strengthen preventive care access by [increasing funding for federal public health initiatives](#) in the 2025 fiscal year budget, as discussed in our most recent Health Care in Motion. The outcome of the November election will determine the balance of power in Congress and shape the ultimate bipartisan compromise during the budget reconciliation process.

ACA Non-Discrimination Protections: What Will Implementation and Enforcement Look Like Given Political and Legal Challenges?

Earlier this year, the Biden Administration released its [final rule](#) interpreting the ACA’s non-discrimination provision, Section 1557. CHLPI has [previously discussed](#) how the 2024 rule reinstates key non-discrimination protections rolled back by the Trump Administration in 2020. Notably, the rule’s LGBTQ+ health protections provide the [“broadest protections to date in healthcare based on gender identity and sexual orientation.”](#) However, the 2024 rule has been [repeatedly challenged](#) in court and is subjected to ongoing litigation.

While it is safe to assume that a potential Harris Administration would leave the 2024 rulemaking in place, a Trump electoral college victory in November would create significant uncertainty. For a complete history of the ping-pong match of Section 1557 rulemaking, see [here](#).

Against this backdrop, the fate of Section 1557 remains uncertain. The Trump Administration's [final rule](#) implementing Section 1557 [directly targeted](#) vulnerable populations by decimating nondiscrimination protections on the basis of gender identity and sexual orientation, limiting language access protections, and narrowing the scope of covered activities, among other changes. Although replacing the rule – yet again – would involve a repeat of the lengthy [notice-and-comment rulemaking process](#), a second Trump Administration could be expected to pursue similar changes. Ultimately, the future of Section 1557 will depend on the outcome of the election, priorities of the next administration, and the ongoing legal battles unfolding in state and federal courts.

What's Next?

The ACA's guarantees of access to health care are facing a storm of both political and legal challenges. On the political side, these issues highlight a divide between Democrats and Republicans when it comes to health insurance, with Democrats largely championing a strong regulatory approach to health insurance plans and Republicans pushing for a free-market approach that leaves many benefit design decisions to plans themselves. Which party takes control of Congress and the White House will decide which set of values dominates health care policy making in 2025 and beyond. Moreover, litigation against key ACA provisions continues to deliver thorny legal questions that must be resolved by both courts and policy makers. Continue to watch this space for updates and action opportunities as these issues evolve.

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