

The ACA from behind the “Veil of Ignorance”

BY SUSAN DENTZER

John Rawls posited that we could determine the nature of justice if we imagined ourselves observing conditions in society from behind a hypothetical “veil of ignorance.” Not knowing how or where we would end up—rich, poor, empowered, disabled—we would choose governing principles that did not leave one disadvantaged because of his or her circumstances.

Rawls’s concepts are implicitly embedded in the Affordable Care Act, which guarantees that vastly more Americans can obtain health insurance. The law effectively closed down the de facto lottery that awarded coverage to most but left out millions of others. The ACA assisted these people through multiple provisions, such as an expanded Medicaid program, mandates on employers to provide health insurance, and a series of interlocking insurance reforms, including a ban on preexisting-condition restrictions. Although the millions of undocumented immigrants resident in the country were left out, the outcome was a more just society. If you didn’t know your position in the health insurance lottery before the law’s enactment, you would surely prefer to have been born into a country governed by the ACA.

With the election of Donald Trump and with his pledge to repeal and replace the ACA, that achievement is now in peril. As of this writing, Trump has not put forward a plan for replacement, but the GOP proposals released to date suggest that millions would lose protections and could be left without coverage. Under most of the plans, the ACA’s expansion of Medicaid would be abolished, and the program would be converted into a federal block grant to states. States would take federal monies and decide on their own how much coverage to provide to poor people. It is unclear what, if any, existing federal requirements on that coverage would continue. Next, with the employer mandate scuttled under most GOP plans, the employment part of the health insurance lottery would be restored.

The better-off could do well under Republican plans to replace the ACA with premium tax credits to help pay for high-deductible health insurance plans and with health savings accounts through which people could save to pay some health costs. But unless the federal funding is as generous as under the ACA, the replacement plan would leave millions with far less coverage than they have now.

And as for those who already have medical conditions, existing Republican plans offer only partial protection. The idea is that, once covered, everyone would obtain “continuous coverage” certificates that would allow them to maintain

insurance despite whatever medical conditions they developed. But if they for any reason let their health insurance lapse for more than a few months—for example, if they lost their jobs and could no longer afford it—they would have to turn to a new federal and state system of “high-risk pools” for cover-

age. Before the ACA, there were high-risk pools in place in thirty-five states, but they were notoriously underfunded and provided, at best, mediocre coverage at high cost.

Applying Rawls’s test, would anyone view this as more just? What about other of the ACA’s insurance reforms that GOP plans appear to scuttle, such as the elimination of lifetime limits on insurance payouts? Pre-ACA, some health plans in the individual insurance market restricted lifetime payouts to as low as \$100,000—scarcely enough to get through one bout with cancer.

The ACA isn’t perfect; it needs fine-tuning. And there are plenty of problems that the law has proved inadequate to address, such as excessive costs. But with the ACA, the uninsured rate in America is now at historical lows. It is not enough to replace the ACA by restoring the unjust health insurance lottery—one that the evidence shows previously cost millions of uninsured Americans their lives.

Choosing justice

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