

# **Biden's on target about what repealing ACA would mean for preexisting condition protections**

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If the Affordable Care Act were terminated, "that would mean over a hundred million Americans will lose protections for preexisting conditions."

President Joe Biden's reelection campaign wants voters to contrast his record on [health care policy](#) with his predecessor's. In May, Biden's campaign began airing a month-long, \$14 million [ad campaign](#) targeting swing-state voters and [minority groups](#) with spots on TV, digital and radio.

In the ad, titled "Terminate," Biden assails former President Donald Trump for his past promises to overturn the Affordable Care Act, also known as Obamacare. Biden also warns of the potential effect if Trump is returned to office and again pursues repeal.

"That would mean over a hundred million Americans will lose protections for preexisting conditions," Biden said in the ad.

Less than six months from Election Day, polls show Trump narrowly leading Biden in a head-to-head race in most swing states. And voters trust Trump to better handle issues such as inflation, crime and the economy by significant margins.

An ABC News/Ipsos poll of about 2,200 adults, released in early May, shows the only major policy issues on which Biden received higher marks than Trump were health care and abortion access. It's no surprise, then, that the campaign is making those topics central to Biden's pitch to voters.

As such, we dug into the facts surrounding Biden's claim.

## **Preexisting condition calculations**

The idea that 100 million Americans are living with one or more preexisting conditions is not new. It was the subject of a back-and-forth between then-candidate Biden and then-President Trump during their previous race, in 2020. After Biden cited that statistic in a presidential

debate, Trump responded, "There aren't a hundred million people with preexisting conditions."

A KFF Health News/PolitiFact HealthCheck at the time rated Biden's claim to be "mostly true," finding a fairly large range of estimates—from 54 million to 135 million—of the number of Americans with preexisting conditions.

Estimates on the lower end tend to consider "preexisting conditions" to be more severe chronic conditions such as cancer or cystic fibrosis. Estimates at the spectrum's higher end include people with more common health problems such as asthma and obesity, and behavioral health disorders such as substance use disorder or depression.

Biden's May ad focuses on how many people would be vulnerable if protections for people with preexisting conditions were lost. This is a matter of some debate. To understand it, we need to break down the protections put in place by the ACA, and those that exist separately.

## **Before and after**

Before the ACA's preexisting condition protections took effect in 2014, insurers in the individual market— people buying coverage for themselves or their families—could charge higher premiums to people with particular conditions, restrict coverage of specific procedures or medications, set annual and lifetime coverage limits on benefits, or deny people coverage.

"There were a number of practices used by [insurance companies](#) to essentially protect themselves from the costs associated with people who have preexisting conditions," said Sabrina Corlette, a co-director of the Center on Health Insurance Reforms at Georgetown University and an expert on the health insurance marketplace.

Insurers providing coverage to large employers could impose long waiting periods before employees' benefits kicked in. And though employer-sponsored plans couldn't discriminate against individual employees based on their health conditions, small-group plans for businesses with fewer than 50 employees could raise costs across the board if large numbers of employees in a given company had such conditions. That could prompt some employers to stop offering coverage.

"The insurer would say, "Well, because you have three people with cancer, we are going to raise your premium dramatically," and therefore make it hard for the small employer to continue to offer coverage to its workers because the coverage is simply unaffordable," recalled Edwin Park, a research professor at Georgetown University's McCourt School of Public Policy who researches public health insurance markets.

As a result, many people with preexisting conditions experienced what some researchers dubbed "job lock." People felt trapped in their jobs because they feared they wouldn't be able to get health insurance anywhere else.

Some basic preexisting condition protections exist independent of the ACA. The 1996 Health Insurance Portability and Accountability Act, for example, restricted how insurers could limit coverage and mandated that employer-sponsored group plans can't refuse to cover someone because of a health condition.

Medicare and Medicaid similarly can't deny coverage based on health background, though age and income-based eligibility requirements mean many Americans don't qualify for that coverage.

Once the ACA's preexisting condition protections kicked in, plans sold on the individual market had to provide a comprehensive package of

benefits to all purchasers, no matter their health status.

Still, some conservatives say Biden's claim overstates how many people are affected by Obamacare protections.

Even if you consider the broadest definition of the number of Americans living with such conditions, "there is zero way you could justify that 100 million people would lose coverage" without ACA protections, said Theo Merkel, who was a Trump administration health policy adviser and is now a senior research fellow with the Paragon Health Institute and a senior fellow at the Manhattan Institute for Policy Research, a conservative think tank.

Joseph Antos, a senior fellow at the American Enterprise Institute, a conservative think tank, called the ad's preexisting conditions claim "the usual bluster." To reach 100 million people affected, he said, "you have to assume that a large number of people would lose coverage." And that's unlikely to happen, he said.

That's because most people—about 55% of Americans, according to the most recent government data—receive health insurance through their employers. As such, they're protected by the Health Insurance Portability and Accountability Act rules, and their plans likely wouldn't change, at least in the short term, if the ACA went away.

Antos said major insurance companies, which have operated under the ACA for more than a decade, would likely maintain the status quo even without such protections. "The negative publicity would be amazing," he said.

People who lose their jobs, he said, would be vulnerable.

But Corlette argued that losing ACA protections could lead to

Americans being priced out of their plans, as health insurers again begin medical underwriting in the individual market.

Park predicted that many businesses could also gradually find themselves priced out of their policies.

"For those firms with older, less healthy workers than other small employers, they would see their premiums rise," he told KFF Health News.

Moreover, Park said, anytime people lost work or switched jobs, they'd risk losing their insurance, reverting to the old days of job lock.

"In any given year, the number [of people affected] will be much smaller than the 100 million, but all of those 100 million would be at risk of being discriminated against because of their preexisting condition," Park said.

## **Our ruling**

We previously ruled Biden's claim that 100 million Americans have preexisting conditions as in the ballpark, and nothing suggests that's changed. Depending on the definition, the number could be smaller, but it also could be even greater and is likely to have increased since 2014.

Though Biden's claim about the number of people who would be affected if those protections went away seems accurate, it is unclear how a return to the pre-ACA situation would manifest.

On the campaign trail this year, Trump has promised—as he did many times in the past—to replace the health law with something better. But he's never produced a replacement plan. Biden's claim shouldn't be judged based on his lack of specificity.

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