



STATE OF WASHINGTON

October 15, 2020

The Honorable Patty Murray
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
United States Senate
511 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Murray and Cantwell:

As the U.S. Senate rushes through the nomination of Judge Amy Coney Barrett, less than a month before the U.S. Supreme Court takes up the *California v. Texas* lawsuit over the Affordable Care Act (ACA), we are writing to share with you our very serious concerns for Washingtonians if the law is struck down by the Court — as advocated by the Trump administration’s own Department of Justice. We appreciate your tireless work to protect the ACA from relentless attacks over the last decade and we know you share our concerns about this pending case. The stakes could not be higher.

That a decision could be handed down in the midst of the COVID-19 pandemic and our nation’s ongoing efforts to recover only intensifies the harm. More than 90,000 Washingtonians will have a new pre-existing condition this year after having been diagnosed with COVID-19.

Since enactment of the ACA, more than 800,000 people gained coverage through the Washington Health Benefit Exchange and Medicaid expansion — cutting our uninsured rate from 14 percent to 5.5 percent in 2019. For hundreds of thousands of Washingtonians, that coverage has persisted despite any losses of employment that occurred due to the pandemic. We have succeeded in embedding many of the ACA’s protections into state law, but we cannot inoculate our people or our economy from the irreparable damages if the law is struck down. It is hard to comprehend how a decision of this magnitude could be made during a global public health crisis that is unlike anything we have seen in our lifetimes.

If the Supreme Court overturns the ACA, the impact on the country and our state will be widespread and devastating. Washington State alone stands to lose billions of dollars in annual federal funding that directly finances affordable health coverage for working families — a cost so high it cannot realistically be assumed by the state — while depriving more than 750,000 of



our residents of affordable health care coverage, critically damaging our state's economy, and destabilizing our insurance markets. As our state faces historic declines in revenue, the ramifications of such a decision are well beyond our capability to prevent.

If the Affordable Care Act is struck down we will see:

- **Elimination of coverage for 625,000 residents who became newly eligible for Medicaid** under the ACA, at a cost of \$3.6 billion annually in lost federal funding.
- **Elimination of financial help and likely loss of coverage for 140,000 residents** who currently receive federal subsidies to purchase qualified health plans on the Exchange, at a cost of \$620 million in 2019 in lost premium tax credits under ACA.
- **A total loss of over \$4.2 billion annually in federal funds** for residents across the state who currently receive free or low-cost coverage under the ACA.

Because of state action, consumers in Washington state are protected from annual and lifetime caps, excessive waiting periods, pre-existing conditions exclusions, and discrimination based on gender, race, national origin or disability. The structure and responsibilities of the Washington Health Benefit Exchange are now in state law.

However, a decision overturning the ACA would render many of these protections useless for the hundreds of thousands of Washingtonians that could be thrown off their health plans. The ability to obtain coverage without consideration of pre-existing conditions, and with guaranteed basic and essential health benefits, provides no protection for Washingtonians who simply cannot afford the coverage. This would have massive implications for people with pre-existing conditions and others who rely on the law's reforms, such as women and older adults. A court decision that makes coverage unaffordable for many would effectively undermine these consumer protections and erode the safety net we have fought to preserve.

The Affordable Care Act is critical to providing health care during the pandemic.

During these times of public anxiety about the virus, Washingtonians should not have to worry about health insurance coverage. They need to know they have access to high quality, affordable medical care. Unfortunately, as COVID-19 has harmed our economy, thousands of people have lost their job and, along with it, their health insurance.

We know the pandemic has already caused more than 100,000 of our fellow Washingtonians to lose health coverage this year. As of September 2020, our state's uninsured rate had grown back to eight percent — and the impact among newly unemployed people has been disproportionately high. With the loss of ACA-based health insurance, the uninsured rate would likely skyrocket higher than it was before 2013.

Thankfully, our Health Benefit Exchange took immediate actions in response to COVID-19 to help connect Washingtonians to health coverage under the ACA. It was the first in the nation to

open a special enrollment period for people newly uninsured because of the pandemic. Our state agencies worked in partnership with community partners and employers to reach this population and let them know about their coverage options, and more than 22,000 people signed up for coverage over a two-month period. Enrollment under Medicaid expansion in our state has also increased by nearly 80,000 since the COVID-19 pandemic began and our efforts to assist the uninsured are ongoing. None of this would have been possible without the ACA.

People of color have been disproportionately impacted.

A quarter of the individuals who enrolled in coverage through our Exchange during the special enrollment period are black, indigenous or people of color. We have also seen many disparities in COVID-19 infection, hospitalization and deaths among people of color and indigenous people:

- Our Hispanic state residents have infections rates three times their representation in our population;
- Hospitalization among Native Hawaiian and other Pacific Islander peoples is four times their share of our population; and
- Deaths among Native Americans and Alaska Native residents of our state are three times their percentage of our population.

We are working to address the many disparities, but the ACA is integral to this work.

Critical coverage and essential health benefits are needed during the pandemic.

As we are seeing increased use of behavioral health services during the COVID-19 pandemic, the coverage of mental health and substance use disorder (SUD) treatment offered by the ACA ensures life-saving care for Washingtonians who need it most. Since 2014, more than 112,000 Washingtonians newly eligible for Medicaid have accessed SUD treatment and more than 325,000 have received mental health services.

The ACA means more than just access to medical and behavioral health services. Some of the adults in our Medicaid expansion population also require rehabilitation in a nursing facility after an acute hospital stay and others with behavioral health challenges have sought help with activities of daily living. Many of these adults needed these services provided through nursing facilities, adult family homes and at home — and have received care as a direct result of the law.

Confirmation of Judge Barrett carries grave consequences.

All Washingtonians deserve affordable, quality health coverage. We have made amazing strides toward this goal under the ACA. Yet the *California v. Texas* lawsuit threatens to wipe out our progress and endanger the lives of our neighbors, friends and family. Given that President Trump has publicly committed to nominating judges who will “terminate” the law, his administration’s explicit support of this lawsuit, and Judge Barrett’s own record questioning previous U.S. Supreme Court decisions upholding the ACA, we are gravely concerned that a vote to confirm

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her to the Court would be a vote to repeal health care for hundreds of thousands of our people.

We ask that you continue fighting with us to protect the health and well-being of our state.

Sincerely,



Jay Inslee
Governor



Mike Kreidler
Insurance Commissioner



Pam MacEwan
CEO, Health Benefit
Exchange

Enclosure: Detailed list of consumer protections in the ACA and the associated protections now embedded in our state law.

Requirement	Washington State Law
Baseline Protections against Discrimination	
No Annual or Lifetime Limits	RCW 48.43.0125 – No annual or lifetime limits for an essential health benefit
No rejection based on preexisting conditions	RCW 48.43.012 – individual and group plans prohibited from excluding coverage to those with preexisting conditions; RCW 48.43.01211 – individual and group plans may not use health status to establish or deny eligibility for coverage.
No excessive waiting periods for coverage	RCW 48.43.0127 – group health plan waiting periods for coverage may not exceed 90 days
Rescission of coverage prohibited absent fraud or intentional misrepresentation of material fact: individual and group coverage	RCW 48.43.0123 – a carrier cannot rescind individual or group coverage unless for fraud or material misrepresentation by an enrollee
Individual & Small group Policies must be guaranteed issue and guaranteed renewable	RCW 48.43. 038 – guaranteed issue/renewal individual plans RCW 48.43.035 – guaranteed issue/renewal small group plans RCW 48.43. 012 – supports guaranteed issue requirements via prohibition on pre-existing condition-based eligibility limitations
Nondiscrimination protections based on protected status	Washington State law (RCW 48.43.0128; chapter 48.30 RCW and title 49 RCW) prohibits discrimination in eligibility, renewal, rating and administration of benefits for those in protected classes, inclusive of sex, gender identity, sexual orientation, health status, race, nationality, disability, domestic violence, claims experience, genetic information or medical condition.
Rating Requirements	
Rate variation must vary only by limited age bands, and for limited factors (tobacco use, wellness program, geographic rating area, individual or family coverage)	Washington State law sets age band ranges at 375%, close to the federal standard, and sets age brackets at a minimum of 5 year increments. Individuals under age 20 must be treated as those age 20. (chapters 48.20, 48.21, 48.44, 48.46 RCW) Tobacco is not included as a rating factor under Washington state law.

Requirement	Washington State Law
Rates must be based on all enrollees in a market risk pool; permitted for states to require merged individual & state risk pool. Grandfathered plans must be rated as a separate risk pool, distinct from the risk pool for non-grandfathered plans.	Individual and small group markets must be rated as separate risk pools (chapters 48.20, 48.21, 48.44, 48.46 RCW).
Purchasing Coverage	
Grace periods for premium payment	RCW 48.20.062 – individual exchange plans must continue coverage during 3 month grace period of nonpayment of premium
Exchange enrollees eligible for premium tax credits and cost sharing reductions	<p>No state-funded premium or cost-sharing subsidies are in place in Washington.</p> <p>Provisions related to the Basic Health Plan, which subsidized individuals with incomes above Medicaid eligibility up to 200% FPL, are still authorized in state code (chapter 70.47 RCW), but have been not in effect since ACA implementation.</p>
Open and special enrollment period limitations – individual/small group markets	RCW 48.43.0122
Individual & Small group coverage can be offered through the Exchange, with specific requirements for qualified health plans (QHP) offered on the Exchange	Chapter 43.71 RCW establishes a state based Exchange as a public-private partnership, authorized to certify individual and small group QHPs that meet specific standards, and establishing a Navigator program to support consumer education and purchasing on the Exchange. The Exchange’s authorizing statutes do not reference the Affordable Care Act.
Type and Value of Benefits	
Employers of 50 or more must offer minimum essential coverage with certain provisos for other available coverage or seasonal or part-time nature of employment.	Nothing comparable in Washington law.

Requirement	Washington State Law
Carriers offering on the Exchange must offer child-only coverage options	Nothing comparable in Washington law.
Children of a subscriber are eligible as dependents until they are 26 years old	Carriers are required to offer coverage of dependents up to age 26 if a health plan offers any dependent coverage (chapter 48.20, 48.21, 48.44 and 48.46 RCW).
10 categories of essential health benefits (EHB) must be offered in individual & small group plans	<p>RCW 48.43.715 – requires individual & small group plans to cover essential health benefits as defined by commissioner in rule, based on the selected state benchmark plan.</p> <p>RCW 48.43.005 – defines essential health benefit categories as ambulatory services, hospital-based services, emergency services, maternity & newborn care, mental health & substance abuse disorder services, prescription drug coverage, rehabilitative & habilitative services & devices, laboratory services, preventive & wellness services and chronic disease management, pediatric services including oral and vision care.</p> <p>There are multiple statutes in chapters 48.20, 48.21, 48.43, 48.44 and 48.46 that require specific types of benefits or access to care by specific provider types. Because the benchmark plan covered these, or the statutes were enacted and explain further coverage in a specific category of EHB, those specific mandates are embraced by the state EHB requirement, and are not affected by an ACA rollback. The sole new state mandate since the adoption of the benchmark plan is coverage for eosinophilic disease feeding disorder prescribed formula. RCW 48.43.176.</p>
Application of federal Mental Health Parity and Addiction Equity Act (MHPAEA) to individual and small group health plans	State mental health parity statute applies to all health plans, short-term limited duration medical plans and student health plans. (RCW 48.20.580, 48.21.241, 48.44.341 and 48.46.291)
Cost sharing limits for maximum out of pocket costs and deductibles	RCW 48.43.0124 – sets cost sharing and out of pocket maximum thresholds for individual and small group markets.

Requirement	Washington State Law
<p>Actuarial value of plans must fall into 4 tiers: platinum, gold, silver or bronze</p>	<p>RCW 48.43.700 – exchange plans must meet AV of platinum, gold, silver or bronze, with requirements for offering gold & silver if offer bronze plans on Exchange. RCW 48.43. 705 – explains which AV level plans must be offered off –Exchange. RCW 43.71.095 – permits Exchange to design and require standard plans alongside non-standard plans offered by carriers on-Exchange.</p>
<p>Individual exchange plans must ensure a sufficient choice of providers</p>	<p>RCW 48.43.515 – individual and small plan networks must have a sufficient number and type of providers to ensure adequate access for enrollees. RCW 48.43.510 – network disclosures and provider directory requirements for individual and group plans. RCW 48.43.045 – networks must include every category of provider type whose scope of practice includes covered benefits. WAC 284-170-200 to 400 – networks must be adequate to permit access to needed care based on benefits offered, sets reporting and measurement standards for networks.</p>