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Attacking the ACA Is an Attack on Mental Health: The Sequel

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This blog posting has been adapted from a post on September 20, 2018, when the author anticipated the consequences of a possible federal court ruling declaring the unconstitutionality of the Affordable Care Act.

The Affordable Care Act (a.k.a. Obamacare) was ruled unconstitutional by a federal court in Texas in December. That ruling has been appealed, and now the Justice Department has asked that the ruling be upheld. If that happens, millions of people will lose health coverage, including coverage for mental health and substance abuse treatment.

Amazing! At a time when everyone agrees that access to treatment is critical to fight the opioid epidemic and that mental health services fall woefully short of meeting America's need, a court ruling could deprive tens of millions of people of coverage for mental health and substance abuse services.

The Affordable Care Act increased access for these services for those tens of millions by increasing coverage generally, by mandating that the health coverage purchased through the federal and state health exchanges include coverage for mental health and substance abuse treatment, and by requiring coverage of pre-existing conditions -- including mental disorders. It also required parity, i.e., that payment for behavioral health services be on a par with physical health services, making such services more affordable.

Before the Affordable Care Act, many health insurance plans for small groups or individuals and occasionally for large groups did not cover behavioral cost at all or only at a great additional cost. The amount of coverage was also usually very limited. Typically, there were caps on numbers of covered outpatient visits and of inpatient days per year. Co-pays were typically 50% rather than 20%. Annual and lifetime caps were common, which might not be a problem for occasional acute disorders but left people with chronic conditions without coverage very quickly.

Mental and substance use disorders were also among the pre-existing conditions for which coverage could be and often was denied.

Federal legislation prior to the Affordable Care Act addressed some of the problems related to lack of parity, but not all. And parity was only required if a health plan included behavioral health coverage, not if the health plan covered only physical health conditions -- a widely used option open to the purchasers of health plans.

And, prior to the ACA, no one -- not large employers or small employers or individuals -- was legally obliged to buy health insurance at all.

The ACA addressed all of these problems. Employers -- except very small employers -- were required to provide coverage for their employees (some with subsidies). Medicaid eligibility was extended to more working poor people. Individuals who did not have coverage through work, Medicare, Medicaid, the State Child Health Insurance Program, or the VA were required to purchase coverage (some with subsidies). And the small group and individual plans purchased through the federal or state health exchanges were required to include coverage for mental health and substance abuse disorders.

The original expectation was that changes under the ACA would provide behavioral health coverage for as many as 62 million people. The decision of several states not to extend Medicaid to larger populations and a subsequent decision not to penalize people who did not purchase insurance resulted in some shortfall. Nevertheless, there are still tens of millions of people with behavioral health coverage today who did not have it prior to the ACA.

Of course, not all will lose coverage if the ACA falls. Some employers who previously did not provide behavioral health coverage may decide to do so. Some individuals could continue to buy plans with such coverage -- if such plans are affordable.

But that is unlikely. If people who do not believe they need coverage for mental health or substance abuse services opt for cheaper plans without behavioral health coverage -- or no plans -- the cost of plans with such coverage will rise because the people who buy them are likely to use them. The insurance industry refers to this as "adverse selection."

If our nation really wants to have a health insurance system that will help to address the opioid epidemic and the vast underservice of people with mental disorders, it must make sure that behavioral health coverage is affordable. It must also require coverage of people with pre-existing conditions. And it must enforce parity requirements.

To do this the Affordable Care Act must stay in place unless or until a viable alternative is created. Swatting it down suddenly by court decree will have devastating consequences for millions.

Michael Friedman, LMSW, worked as a mental health practitioner, administrator, government official (deputy commissioner of the New York State Office of Mental Health), and advocate for over 40 years before retiring in July 2010. He also teaches health and mental health policy at Columbia University School of Social Work and writes frequently about mental health and about aging.